



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/3169

Re: Property at 2 Whinny Burn Court, Motherwell, ML1 2LW (“the Property”)

Parties:

Mr David Harbury, 85 Ardrossan Road, Seamill, West Kilbride, North Ayrshire, KA23 9NF (“the Applicant”)

Miss Melanie Shaw, 2 Whinny Burn Court, Motherwell, ML1 2LW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for eviction against the Respondent.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 18 November 2019;
 - (ii) Notice to Leave stating that proceedings for possession will commence no earlier than 29 July 2021 and citing ground 12, together with proof of service on the tenant by Sheriff Officers on 28 January 2021;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council together with proof of service by email to the Council;

- (iv) Copy correspondence from the Applicant to the Respondent; and
 - (v) Rent Statement.
- 2 By Notice of Acceptance of Application dated 5 January 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 15 March 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussions

- 3 The Case Management Discussion took place by teleconference on 15 March 2022. Ms Kirsty Morrison of TC Young LLP appeared on behalf of the Applicant who was not in attendance. The Respondent was not present. The Tribunal noted that the application paperwork had been served upon her by Sheriff Officers and therefore determined to proceed in her absence.
- 4 Ms Morrison set out the position as stated in the application, namely that the Applicant had let the property to the Respondent in 2019 and had subsequently served Notice to Leave on 28 January 2021 due to ongoing arrears. The Respondent had undertook to pay rent at the rate of £465 per calendar month. As at the date of service of the Notice to Leave arrears in the sum of £5115 had accrued. That figure had increased to £11,160 as at the date of the Case Management Discussion. No payments had been made to the rent account since 2 March 2020 and the account had been consistently in arrears since that date.
- 5 Ms Morrison explained that despite numerous attempts to contact the Respondent, as evidenced by the correspondence lodged with the application, she had failed to engage and had failed to provide any explanation for the arrears. In terms of her personal circumstances, she was 47 years old, living with a child whose age was unknown. She had been employed at the start of the tenancy and not in receipt of any benefits, but her current status was unknown.
- 6 Ms Morrison pointed out the impact on the Applicant, who had been making payments towards the mortgage for the property despite having no rental income. This had caused him financial difficulty. He had intended on selling the property before his 75th birthday but had been unable to do so. Instead he had to take out an extension to the mortgage which had been very stressful. Ms Morrison submitted that an order for eviction would be reasonable in all the circumstances. She noted that the Respondent had been given the opportunity to attend but had failed to do so. In response to questions from the Tribunal Ms Morrison advised that she was not aware of the last contact from the

Respondent, albeit she had been told by the Applicant that the Respondent had not responded to the correspondence sent to her in terms of the pre-action requirements.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal’s power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

8 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

9 The parties entered into a Private Residential Tenancy Agreement dated 18 November 2019.

10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 11 On 28 January 2021 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 29 July 2021.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £465 per calendar month.
- 14 As at the date of service of the Notice to Leave arrears in the sum of £5115 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £11,160 were outstanding.
- 16 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 17 The last payment made to the rent account was on 2 March 2020.
- 18 The Applicant has complied with the pre-action requirements by issuing correspondence to the Respondent regarding her arrears, with details of the sums outstanding and advice agencies for support.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.

- 23 The Tribunal accepted that there were rent arrears outstanding in the sum of £11,160 and that no rent had been paid since 2 March 2020. The rent arrears had therefore been steadily increasing for approximately two years by the date of the Case Management Discussion, with no explanation from the Respondent as to the lack of payments. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had went unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.
- 24 The Tribunal then considered the question of reasonableness. Taking into account the level of rent arrears, the lack of payments since March 2020, the attempts by the Applicant to engage with the Respondent and the impact the situation was having on him in terms of his lack of rental income, the Tribunal ultimately considered it would be reasonable to make an order for eviction. The Respondent had failed to engage with the proceedings and there was therefore nothing before the Tribunal to contradict the position put forward on behalf of the Applicant which the Tribunal found to be credible. The Tribunal did note Ms Morrison's comments that the Respondent lived with her son, however, having received no information on the age of the child due to the Respondent's failure to engage the Tribunal did not consider this outweighed the conclusions it had reached in terms of the reasonableness of granting the order.
- 25 The Tribunal therefore determined to make an order for eviction against the Respondent. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member: Ruth O'Hare

Date: 15th March 2022