



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/22/1818

Re: Property at Flat 9, 5 McCormack Place, Larbert, FK5 4TU (“the Property”)

Parties:

Mr Gino Notarangelo, Mrs Gloria Notarangelo, 15 Dumyat Drive, Falkirk, FK1 5PD (“the Applicant”)

Mr Steven Young, Flat 9-5 McCormack Place, Larbert, FK5 4TU (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted.

On 13th June 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Tenancy Agreement with a start date of 11th September 2020;
2. Notice To Leave dated 5th August 2021 with a leave date of 8th February 2022;
3. Email dated 5th August 2021 to Respondent with Notice To Leave;
4. Rent Statement;
5. Section 11 Notice;
6. Email to Local Authority intimating s11 Notice

7. Pre Action Requirements letters dated 16th July 2020, 5th August 2021, 1st October 2021 and 8th January 2022

The Application was served on the Respondent by Sheriff Officers on 27th July 2022.

On 12th August 2022 the Applicant lodged a further document, being an updated rent statement.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Claire Mullen of TC Young, Solicitors. There was no attendance by the Respondent or any representative on his behalf.

Mrs Mullen told the tribunal that she was seeking an order for eviction in terms of ground 12 of Schedule 3 of the Act. A Notice to leave had been served on the respondent by email of 5th August 2022, giving the requisite 6 months’ notice. The current arrears are £7508.37, representing 12 months of non payment.

The Applicant had attempted to negotiation with the Respondent and had reached agreement in January 2022 for the Respondent to pay £200 per week, being rent plus £56 toward arrears. He was also to make additional payments as and when he could afford it. The Respondent adhered to the arrangement in January 2022, but was short on his payments in both February and March 2022. He qualified for an element of Universal Credit in March and April 2022, but his entitlement came to an end as he entered employment. No payments have been forthcoming since then.

The most recent communication was a trail of emails in June 2022 when the Respondent said he had made a payment and the Applicant responded to say it had not been received and asking for proof.

Mrs Mullen said that the Respondent was a 29 year old man who is single. She submitted it was reasonable in the circumstances to grant the order as there had been numerous attempts to contact the Respondent and he had broken arrangements.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property with a start date of 11th September 2020;
2. The monthly rent is £625;
3. A Notice To Leave was served timeously and correctly;
4. The correct notice period in terms of the Coronavirus (Scotland) Act 2020 has been given;
5. This Application was served on the Respondent by Sheriff Officer on 27th July 2022;
6. The Pre Action requirements have been complied with;
7. At the date the Notice to Leave was served the arrears were £2085;
8. At the date the Tribunal application was lodged the arrears were £6258.37;

9. At the date of the CMD the arrears were £7508.37.

Reasons for Decision

The Tribunal were of the view in this case. that the Applicant had established Ground 12.

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3)Schedule 3 (eviction grounds) has effect as if—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (a), the word "and" were repealed,

(iii)after paragraph (b) there were inserted ", and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (b), the word "and" were repealed,

(iii)after paragraph (c) there were inserted ", and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (b), the word "and" were repealed,

(iii)after paragraph (c) there were inserted ", and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “3 months” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “home” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b) the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,

(ii)for paragraph (c) there were substituted—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) were repealed,

(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal found that the Applicant had made approaches to the Respondent, agreements had been reached and then broken. There had been no payment since April 2022. There was a significant level of arrears.. The Tribunal considered it reasonable to grant the order.

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.

Alison Kelly

2nd September 2022

Legal Member/Chair

Date