

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/22/1968

Re: Property at 11 Wood Street, Coatbridge, North Lanarkshire, ML5 1LX (“the Property”)

Parties:

Mr David Murray, 11 Kilmore Grove, Coatbridge, ML5 5JU (“the Applicant”)

Mrs Sheree Blair, 11 Wood Street, Coatbridge, North Lanarkshire, ML5 1LX (“the Respondent”)

Tribunal Members:

Fiona Watson (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 that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application dated 20 June 2022 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- 2. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement

- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement
- (vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

- First Case Management Discussion

3. A Case Management Discussion (“CMD”) took place on 18 October 2022 by conference call. The Applicant was represented by his letting agent, Mr Paul Clarke of Aquila Management Services. The Respondent did not attend nor was she represented. The papers had been served on the Respondent by Sheriff Officer on 1 September 2022. The Tribunal was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in her absence.
4. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 14 September 2020. The Respondent had fallen into arrears of rent in December 2020 and had been in a continuous arrear since then. The Respondent has been in receipt of Universal Credit since on or around March 2022, but the Respondent is failing to pay the shortfall each month which is usually £90-£100 per month. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 1 December 2021. The Respondent had been in continuous arrears for at least 3 months and the arrears at the date of the CMD stood at £1,994.22. The monthly rent is £450. Attempts had been made to discuss matters with the Respondent but she has failed to engage. She does not return phone calls nor reply to emails. She is not in employment, and she lives alone with no dependants.
5. The Applicant’s representative submitted that the Pre-Action Requirements (“PARs”) had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Emails of 3 December 2021, 4 January 2022, 20 January 2022, 27 January 2022 and 17 June 2022 had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
6. The Applicant had previously raised a civil application against the Respondent (case reference FTS/HPC/CV/21/3044) seeking a payment order for arrears due and on 30 March 2022 was granted an Order of £1,817.35 against the Respondent. The Respondent had been represented by CAB at that hearing, however CAB advised Mr Clark that they had no instructions from the Respondent to assist her with this application for repossession.
7. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified ground 12 in accordance with the

requirements of section 52 of the 2016 Act, and that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met. The Tribunal was also satisfied that it was reasonable to grant the Order under the circumstances. The Tribunal accordingly granted the order for repossession.

- Application for Recall

8. On 26 October 2022 the Respondent emailed the Tribunal administration advising that she wished to apply for a recall of the Order for Repossession granted on 18 October 2022 (“the Decision”). The Respondent stated that she had not attended the CMD as she suffers from severe mental health problems. She had no one to represent her at the CMD and she was too ill to attend herself. She stated that a claim for Personal Independence Payments was refused and this is subject to an appeal hearing, at which she has instructed representation. If successful, she will be entitled to a backdated payment. She also states that she intends to seek assistance to put in place a repayment arrangement as regards her rent arrears.

9. The Tribunal considered matters in terms of the provisions of Rule 30 of the Rules and determined that it was in the interests of justice that the application for recall of the Decision of the Tribunal dated 18 October 2022 was granted. The application was remitted back to a Case Management Discussion to take place on 28 February 2023.

- Second Case Management Discussion

10. A further CMD took place on 28 February 2023 by conference call. The Applicant was again represented by his letting agent, Mr Paul Clarke of Aquila Management Services. The Respondent did not attend nor was she represented. The date and time of the CMD had been intimated on the Respondent by way of letter and email of 25 January 2023. The Tribunal was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in her absence.

11. The Applicant’s representative advised that the arrears had continued to increase further since the previous CMD, and now stood at £2804. The Respondent had made no personal payments to her rent account since the previous CMD. The Respondent had been seeking advice from Mr Melvin at Citizens Advice Bureau (CAB) and Mr Melvin had advised the agents not to send any correspondence to the Respondent directly, and only via CAB. The Applicant’s representative advised that he understood that Mr Melvin was aware of the CMD but had not indicated if he would be representing the Respondent at same. The Applicant’s representative advised that whilst the Respondent had stated in her recall application that she was appealing a refusal of a Personal Independent Payments claim and which appeal was due to be heard on 31 October 2022, he had heard nothing from her or CAB with any update on this. The Applicant’s representative also advised that the Respondent had previously advised that there was such an appeal ongoing

earlier in 2022 and nothing had come of it. The Respondent continues to receive Universal Credit payments but has a shortfall between the payment received and her rental due amounting to approximately £90 per month, which she fails to pay, meaning that the arrears simply increase month on month. The Applicant's representative moved again for the Order to be granted.

- Findings in Fact

12. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 14 September 2020;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £450 per calendar month payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 1 December 2021;
- (iv) The Respondent has been in continuous arrears of rent since December 2020;
- (v) The Respondent is in arrears of rent amounting to £2,804 at the date of the CMD;

- Reasons for Decision

13. Section 51 of the 2016 Act states as follows:

51 (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.

14. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)...

- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (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—*
- (a) 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, and*
 - (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
- (5) For the purposes of this paragraph—*
- (a) references to a relevant benefit are to—*
 - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
 - (ii) a payment on account awarded under regulation 91 of those Regulations,*
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*
- (6) Regulations under sub-paragraph (4)(b) may make provision about—*
- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*
 - (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*
 - (c) such other matters as the Scottish Ministers consider appropriate.*

15. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that

the Respondent has been in continuous arrears of rent for at least three months and that it was reasonable to grant the Order sought. The Tribunal was satisfied that there was no information before it to suggest that the tenant being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

16. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since December 2020. No explanation had been given by her as to the reason for failure to repay the rent due, nor the reason for failure to enter into a repayment arrangement. She was receiving benefits to pay part of the rent but failing to meet the shortfall herself. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. The Respondent appeared to have the assistance of CAB (albeit not in a tribunal representative capacity). The Respondent had submitted an application for recall but again failed to attend at the CMD fixed as a result of that, to put her position to the tribunal and provide an update on matters. The Respondent had made statements in her recall application regarding there being a benefits appeal to be determined at the end of October 2022, but failed to provide any update on same. The Tribunal was satisfied that the arrears of rent continued to accrue, that the situation had not improved since the last CMD and had in fact worsened, and that the Respondent had failed to provide any firm proposal to the Tribunal as regards how she intended to address the arrears which were in existence and prevent further arrears accruing. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

17. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 28 February 2023