



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/22/2039

Re: Property at 152 Maree Place, Irvine, Ayrshire, KA12 9PQ (“the Property”)

Parties:

Easton Property Newfield Limited, 2 Newfield Drive, Dundonald, Ayrshire, KA2 9EW (“the Applicant”)

Ms Caralynne Smith, 152 Maree Place, Irvine, Ayrshire, KA12 9PQ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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 27 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”).

- Case Management Discussion

1. A Case Management Discussion (“CMD”) took place on 23 November 2022. The Applicant was represented by Ms Barclay of Easton Housing Limited. Mr Easton of Easton Housing Limited was also present. The Respondent was represented by Mr Meek, from the Advice and Information Department of CHAP. The Respondent was not in attendance.
2. A separate application by the Applicant seeking a payment order against the Respondent under Rule 111 of the Rules and under case reference FTS/HPC/CV/22/2040 was heard at the same time.
3. 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 5 April 2018. The Respondent had fallen into arrears of rent in May 2018 and had been in a continuous arrear since then. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 4 May 2022. The Respondent had been in continuous arrears for at least 3 months and the arrears at the date of the CMD stood at £5,112.16. Attempts had been made to discuss matters with the Respondent but she had failed to engage.
4. The Respondent’s representative submitted that the application was not opposed by the Respondent. The arrears were admitted. The Respondent had sought assistance from the local authority and would be re-housed by them if an eviction order was granted. The respondent was heavily pregnant.
5. 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.

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 5 April 2018;
 - (ii) In terms of Clause 7 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £475 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 4 May 2022;

- (iv) The Respondent has been in continuous arrears of rent since May 2018;
- (v) The Respondent is in arrears of rent amounting to £5,112.16 at the date of the CMD.

- Reasons for Decision

7. 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 or must 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.

8. 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) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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.

(3A)Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a)that the eviction ground named by sub-paragraph (1) applies, and

(b)that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B)Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(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)In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7)Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to 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 to 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.

9. 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 up to and including the date of the CMD and further that there are arrears of rent due which are greater than the equivalent of one month.

10. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since May 2018. The arrears accrued were substantial and no repayment arrangements had been entered into. Whilst it was noted that the Respondent was heavily pregnant, the Respondent's representative confirmed that the local authority would re-house the Respondent upon a decree for repossession being granted, and on that basis the application was not opposed.

- Decision

11. 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 under 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: 23 November 2022