



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/22/2219

Re: Property at 315 Websters Land, West Port, Edinburgh, EH1 2RU (“the Property”)

Parties:

Mrs Caroline MacFarlane, 16 Kirkhill Gardens, Edinburgh, EH16 5DF (“the Applicant”)

Mr Alan Reilly, 315 Websters Land, West Port, Edinburgh, EH1 2RU (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 1st July 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with her application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, rent arrears statement, photographs, and various pre-action correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the

Coronavirus (Scotland) Act 2020, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 5th January 2023, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 15th February 2023 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant confirmed that rent arrears at the time the notice to leave was served were £2,070.00, and as of today's date were £2,067.31.

The Tribunal was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Applicant in her application form had originally also sought an order on Ground 11, but after discussion with the Tribunal withdrew this ground.

The Applicant, under reference to the pre-action correspondence, advised the Tribunal of various attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears, and advising him about where he might obtain advice.

The notice to leave dated 11th December 2021 relied on grounds 11 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £680.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement. The Respondent had been in arrears since May 2021 as at the date of the notice to leave, and he had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding 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.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months.

The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears. The Applicant advised that the tenant ceased payment of rent from October 2021. She later commenced receiving direct payment of rent from the Respondent's benefit payments. She also latterly received an additional payment of £66.98 directly from the benefits agency to reduce the accrued rent arrears. It would, however, take a further 31 months for those payments to repay the accrued arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondent has failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

In those circumstances, having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

Decision

In these circumstances, the Tribunal made an eviction order against the Respondent in this application.

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.

N. Kinnear

15th February 2023

Legal Member/Chair

Date