



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/22/2552

Re: Property at 7 Emmock Woods Road, Dundee, DD4 9FQ (“the Property”)

Parties:

Mrs Margaret Stewart, 19 falcon Way, Forfar, DD8 3FW (“the Applicant”)

Messrs Shiells, Solicitors, 31a St David Street, Brechin, DD9 6EG (“the Applicant’s Representative”)

Mr Scott Ramsay and Mr Scott Ramsay (Junior), 7 Emmock Woods Road, Dundee, DD4 9FQ (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 27th July 2022, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 2nd December 2022, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by audio conference on 27th February 2023.

The case management discussion

4. Mr Gair Couston, solicitor and Mr Norman Law, property manager of Shiells, Solicitors represented the Applicant.
5. The Respondents were not present and the tribunal noted that the arrangements for the case management discussion had been intimated to them by Sheriff Officer on 12th January 2023.
6. The Legal Member explained the purpose of a case management discussion.
7. Mr Couston said that, when the application had been lodged, it had been assumed that the Property had belonged to Mr William Stewart and Mrs Margaret Stewart. He referred the tribunal to a copy deed which had been submitted and he said that the Property is in the sole ownership of Mrs Margaret Stewart. Mr Couston asked the tribunal to allow the application to be amended to restrict it to be by Mrs Margaret Stewart alone because this would reflect the ownership of the Property.
8. The tribunal considered the terms of Rule 14 A and determined to allow the application to be amended as requested by Mr Couston. Although the change in applicant had not been intimated to the Respondents, the tribunal did not consider there to be any prejudice caused to them by allowing such an amendment.
9. Mr Couston invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 12, Part 3 of Schedule 3 of the 2016 Act have been met.

10. Findings in Fact

- (i) The Applicant and the Respondents entered into a private residential tenancy agreement in respect of the Property on 22nd December 2021.
- (ii) The tenancy commenced on 24th December 2021.
- (iii) The monthly rent due under the private residential tenancy is £700.
- (iv) The rent arrears due as at 27th July 2022 were £3500.
- (v) The rent arrears on 27th February 2023 are £8400.

11. Finding in Fact and Law

The Respondent is in rent arrears for three or more consecutive months as at the date of the case management discussion.

12. Documents before Tribunal

- (i) Private residential tenancy agreement dated 22nd December 2021.
- (ii) Copy Notices to Leave dated 23rd and 24th June 2022.
- (iii) Copy Section 11 intimation to local authority.
- (iv) Letters from Applicant's agents to Respondents dated 30th June, 7th July and 14th July, all 2022 in which he is advised of agencies which might assist tenants requiring support or advice with regard to difficulties in paying rent.
- (v) Rent statements.

13. The Law

Section 51 of the 2016 Act:

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 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.

Ground 12, Part 3 of Schedule 3 of the 2016 Act

Rent arrears

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.

(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.

Schedule 1 of the Coronavirus (Scotland) Act 2020 as continued by the Coronavirus (Extension and Expiry) (Scotland) Act 2021

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—

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

Applicant's Position

14. Mr Couston said that no payment of rent had been made since the application was submitted to the Tribunal. He said that the current level of rent arrears as at the date of the case management decision was £8,400.
15. Mr Couston and Mr Law said that efforts had been made to have the Respondents engage with them to try and get a resolution to the arrears position. Mr Couston said that the Applicants would have been happy to enter into some payment plan but that there had been no response from either of the Respondents.
16. Mr Law said that he understood that Mr Ramsay junior at one point had moved out of the Property and that, when he had moved back in, Mr Ramsay senior had left. He said that matters were not entirely clear and that he had emailed each respondent a few days ago to try and ascertain the position. He said that Mr Ramsay senior had responded to advise that he had moved out but that his son was still in the Property and that the Applicant's Representative "should stop annoying his son." Mr Law said that Mr Ramsay junior had telephoned him in response to the email and had confirmed that he was still residing in the Property.
17. Mr Law said that, as far as he was aware, there was no issue for the Respondents with regard to applications for state benefits which had not been processed. He said that both respondents were in receipt of state benefits. He said that Mr Ramsay senior was visually impaired.

Reasons for Decision

18. The tribunal saw no reason for determination of the application to be continued to a Hearing. There was more than three months' rent lawfully due.
19. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003 and that the Applicant had followed the requirements of the Rent- Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
20. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.

21. The Respondents had not engaged with the Tribunal process and nothing was therefore known about their particular circumstances other than what was disclosed by the Applicant's Representative. It was not reasonable for the Applicant to continue to sustain the Respondents' non payment of rent and she should be able to recover the Property.

Decision

22. The tribunal determined that the application be granted and that an eviction order be made.

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.

**Martin J. McAllister
Legal Member
27th February 2023**