



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/22/4142

Re: Property at 76 A Clepington Road, Dundee, DD3 7SW (“the Property”)

Parties:

Quarry Management Investment Company Ltd, Quarry Cottage Main Street, Inchtute, Perthshire, PH149RN (“the Applicant”)

Mr Stuart Gow, Miss Jade Small, 76 A Clepington Road, Dundee, DD3 7SW; 76 A Clepington Road, Dundee, DD3 7SW (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”)

seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) tenancy agreement
- (5) evidence of pre-action protocol
- (6) rent statement

3. The applicant's agent Mr Myles from J Myles and Co Solicitors appeared on behalf of the applicant. The respondents did not appear. There was evidence of service of the papers and notice of today's case management discussion on the respondents on 19 April 2023. The tribunal agreed to proceed with the case management discussion in the absence of the respondents.

4. The applicant's agent had written to the tribunal on 17 April 2023 attaching further information, namely letters to the respondents, noting that the arrears had risen to £19,730 and that the applicant was seeking to amend their application to Ground 12A. Also attached was evidence that the letters had been sent by recorded delivery post. The tribunal had also crossed this further information to the respondents.

Discussion

5. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears). There had been 6 months' rent arrears when the notice to leave was served on the respondent, and there were now 12 months rent arrears outstanding. The rent arrears due now totalled £19,730. The rent due was £450 a month.

6. He first moved to amend the ground for recovery to 12A. The tribunal granted the amendment.

7. The agent then confirmed that he was seeking an order for recovery under Ground 12A.
8. The agent advised that there were no benefit issues relating to the respondents. The landlord advised that the respondents had never paid a penny in rent since they moved in. He advised that when they first moved in, they had told the landlord that they were having issues getting their universal credit sorted out. The landlord agreed that they could have 6 months to resolve things. At the end of the 6 month period no rent was being paid, and the covid pandemic had started and they were unable to remove them. The respondents then indicated that they were moving to a tenancy which had belonged to one of their mother's, however that did not happen either.
9. The landlord believed that the respondents "were playing the system". The landlord did not expect to get his rent repaid however he was keen to have them removed in order that they can go on and relet it to someone else. He advised that he has a portfolio of around 50 properties at present and he has 4 tenants who have not been paying their rent, he advised that this has an impact on the business, when 10% of rent is not paid it makes the business more difficult to run. He advised that he has mortgage payments to make, and he cannot afford to not receive rent. He advised that he will be sympathetic to people who are struggling with issues, however in this case, he believes that they have no intention of paying anything and are sitting tight until an order is granted. He also believed that they are receiving their universal credit benefits and keeping them. His legal agent had written to universal credits about these respondents and their failure to pay rent, but he had not had a responded to his correspondence.
10. His agent advised that he had sent pre-action protocol letters to the respondents in December 2022 but there had been no response to those letters.

Findings in Fact

11. The Tribunal found the following facts established: -
12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 15 September 2019.

13. The tenants were Jade Small and Stuart Gow.
14. The landlord was Quarry Management Investment Co Limited.
15. The property was GFL, 76 Clepington Road, Dundee.
16. Clause 8 of the tenancy stated that rent was £450 a calendar month payable in advance.
17. There was submitted a notice to leave dated 4 May 2022, stating that an application would not be made until 4 June 2022. It sought eviction under ground 12 rent arrears. It set out that no rent had been paid since the tenancy started and when the notice was served the arrears totalled £14,335.00.
18. The notice to leave had been posted by recorded delivery to the tenants. There was evidence of service.
19. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
20. There was correspondence sent to the tribunal 17 April 2023 seeking to amend the application to Ground 12A - substantial rent arrears. This correspondence had also been sent to the respondents by the applicant's agent and also by the tribunal.
21. At 17 April 2023 arrears were £19730.00.
22. There was a rent statement submitted with the application on 9 November 2022 showing arrears outstanding of £17,035.00.
23. There was a rent statement submitted on 17 April 2023 showing arrears outstanding of £19,730.00.
24. There was evidence that the pre-action protocol requirements had been followed.
25. There was no evidence of failure or delay in any benefit payment to the respondent.

26. The respondent had failed to pay any rent at all from the commencement of the tenancy.

Reasons for Decision

27. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

28. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms :-

“Substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2)The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). ...

29. The applicant’s agent and applicant appeared. The respondents did not appear. The applicant’s agent confirmed that his client sought an order for eviction based on the

fact that when the notice to leave had been served there had been at least 6 months rent arrears due to him.

30. Section 52 (5) of the 2016 Act allows the tribunal to consider if an eviction ground exists if it stated in the notice to leave or if it has been included with the tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought. In this case, the application was allowed to amend his application to include Ground 12A.

31. Turning to whether Ground 12A was met. It appeared that the first part of the ground 12A was clearly met. The tribunal therefore required to proceed to consider if it would be reasonable to grant the order. We took into account that there appeared to be no failure of any benefit payment due to the respondent. Further, that the agent had sent out pre-action protocol correspondence to the respondents. We then placed significant weight on the fact that the respondents have paid no rent whatsoever for this property since they took entry. It appeared to us that the landlord had been exceptionally patient with the respondents and had acted in good faith in their dealings with the respondents, allowing them time to sort out benefits and then to move to another tenancy. The respondents on the other hand appeared to have had no intention of paying rent to the landlord. It did appear on the face of it that they had been "playing the system" and acting in bad faith. We were also advised that the respondents had no dependents living with them, and they had at one time advised the landlords that they had somewhere else to live.

32. Considering the papers before us and the oral submission by the applicant and his agent, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 A was met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

33. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of 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.

Melanie Barbour

22.05.2023

Legal Member/Chair

Date