



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/22/4309

Re: Property at 25 Douglas Avenue, Brightons, Falkirk, Stirlingshire, FK2 0HB (“the Property”)

Parties:

Mr Stewart Harper, Mrs Dorothy Harper, 4 Wallace Brae Bank, Reddingmuirhead, Falkirk, FK2 0FW (“the Applicants”)

Mrs Dawn Ellison, Mr Roland Ellison, formerly residing at 25 Douglas Avenue, Brightons, Falkirk, Stirlingshire, FK2 0HB, and whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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 December 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 Applicants sought an eviction order in relation to the Property against the Respondents, and provided with their application copies of the notice to leave, section 11 notice, relevant executions of service, and affidavits explaining their circumstances.

All of these documents and forms excepting possibly the notice to leave 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 *Cost*

of *Living (Tenant Protection) (Scotland) Act 2022*, and the procedures set out in those Acts appeared to have been correctly followed and applied.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 4th May 2023 by Tele-Conference. The Applicants did not participate, but were represented by Mr McKeown, solicitor. The Respondents did not participate, nor were they represented. The Respondents 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 Tribunal noted that the notice to leave specified a date before which an application would not be submitted to the Tribunal for an eviction order of 21st October 2022. The notice was dated 26th July 2022 and served on 27th July 2022. On that basis, the date specified on the notice should have been 20th October 2022.

Mr McKeown invited the Tribunal with reference to the application and papers to grant the order sought on grounds 4 and 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. He asked for the Tribunal's permission to include ground 12A in the application as a stated basis on which an eviction order is sought in terms of section 52(5)(b) of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The original notice to leave dated 26th July 2022 relied on ground 4 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that the Applicant intends to live in the Let Property. Thereafter, the Applicants served a second notice to leave dated 17th February 2023 which relied on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £700.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. The Respondents had been in substantial rent arrears of £5,600.00 as at the date of the second notice to leave, and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when the second notice to leave was given to them.

Mr McKeown, under reference to the pre-action protocol, advised the Tribunal of his letters on behalf of the Applicants to the Respondents asking them to make contact with the Applicants in order to discuss options to assist them with their rent arrears, and advising them about Tribunal eviction procedures and where they might obtain advice.

Mr McKeown referred the Tribunal to the affidavits of the Applicants, which explained their personal circumstances and their need to sell their current property and move into the Property, which is smaller and more suited to their needs.

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.

Section 52(2)(3) and (4) of the Act provide:

“(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.”

Section 54 of the Act provides:

“(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months,

(iiia) that the tenant has substantial rent arrears,

(iv) that the tenant has a relevant conviction,

(v) that the tenant has engaged in relevant anti-social behaviour,

(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).”

Section 62 of the Act provides:

“(1) References in this Part to a notice to leave are to a notice which—
(a) is in writing,
(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).
(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent

Section 73 of the Act provides:

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
(2) This section applies to—
(a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),
(b) the document by which a referral is made to a rent officer under section 24(1),
(c) the document by which an application is made to a rent officer under section 42(1), and
(d) a notice to leave (as defined by section 62(1)).”

The relevant period in relation to the original notice to leave was 84 days in terms of section 54 of the Act. In terms of section 62 of the Act, the notice to leave required to specify the day on which the Applicant expected to become entitled to make an application for an eviction order to the Tribunal. That date was the day falling after the relevant period of 84 days had expired, which relevant period commenced on the day when the Respondents received the original notice to leave, which is assumed to be 48 hours after it was sent.

The date of the notice was 26th July 2022. That being so, the correct date which ought to have been specified in the notice to leave before which the Applicants expected to become entitled to make an application for an eviction order to the Tribunal ought to have been 20th October 2022.

However, the Tribunal took the view that in circumstances where any error in the date provided a longer period than was required in terms of sections 54 and 62, it did not make the notice to leave invalid as it did not affect the effect of the document in terms of section 73 of the Act in circumstances where the tenant received a longer period of notice than required.

Para 4 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to live in the property. The Tribunal may find that this ground applies if (1) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

The Tribunal was satisfied that ground 4 had been established. The Applicants confirmed that they intend to occupy the let property as their only home for the foreseeable future, and for at least 3 months, and *prima facie* the Applicants had made out that it was reasonable to issue an eviction order on account of that fact.

Para 12A of Schedule 3 to the Act provides that it is an eviction ground that the tenant has substantial rent arrears. That ground applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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 that the Tribunal is satisfied that it is reasonable 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, and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal granted permission to include ground 12A in the application as a stated basis on which an eviction order is sought in terms of section 52(5)(b) of the *Private Housing (Tenancies) (Scotland) Act 2016*, and was satisfied that ground 12A had been established. The tenant was in substantial arrears of rent in respect of one or more periods and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on that ground. The Tribunal was 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 Tribunal was further satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

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 Respondents 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 Respondents 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 Respondents 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

04 May 2023

Legal Member/Chair

Date