



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/0137

Re: Property at Flat 1/2, 59 Mill Street, Rutherglen, Glasgow, G73 2LB (“the Property”)

Parties:

Mr William Michael Miller, 12 Lindsay Road, East Kilbride, Glasgow, G74 4JA (“the Applicant”)

Mr Graham Kelly, Mr Gordon Kelly, Flat 1/2, 59 Mill Street, Rutherglen, Glasgow, G73 2LB; Flat 1/2, 59 Mill Street, Rutherglen, Glasgow, G73 2LB (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property at flat 1/2, 59 Mill Street, Rutherglen, Glasgow be made, on ground 12A (substantial rent arrears in excess of 6 months) and it is reasonable in all of the circumstances that the eviction be granted;

And that earliest date of execution of the Eviction order should be deferred for a period of three weeks from the otherwise earliest date of execution.

Background

1. An application was submitted dated 13 January 2023 in terms of Rule 109 of the Chamber Rules for an order for possession on termination of tenancy in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. Along with the application form, the Applicant lodged the following documents:
 - Schedule of rent payments
 - Copy Notice to Leave addressed to both tenants

- Copy Section 11 Notice
 - Certificate of intimation of Section 11 Notice on local authority
 - Certificate of intimation of Notices to Leave
2. The Tribunal wrote to the Applicant's agents on 17 January 2023 acknowledging receipt of the application and asking for further information namely a copy of the separate sheet referred to in Section 4 of the application form and evidence of service of the Section 11 Notice.
 3. The Applicant's agents responded by email dated 18 January 2023 re-attaching the application form and attachments and making reference to the further information requested by the Tribunal.
 4. The Tribunal wrote again to the Applicant's agents on 13 February 2023 asking for the following further information:
 - A copy of the lease agreement;
 - The applicant's address which was not to be a "care of" address;
 - Evidence of the rent arrears in the form of a rent arrears statement showing the total level of arrears and how and when those were accrued with running balance shown;
 - Copies of documents, letters or emails sent to the tenants in compliance with the terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020;
 - The applicant's agents' submissions on the circumstances in support of the reasonableness of the Tribunal granting an eviction order.
 5. The Applicant's agents replied by letter dated 14 February 2023 attaching an updated case enclosing, in addition to further copies of the papers already seen, copy letter to each tenant dated 19 August 2022, copy tenancy agreement, copy rent arrears statement.
 6. The application was accepted and assigned to a case management discussion. The Tribunal wrote to the Applicant's agents on 9 March 2023 confirming that the Cost of Living (Tenant Protection) (Scotland) Act 2022 applied to the application and provided information on the options available in these circumstances.
 7. The Applicant's agents replied by email dated 22 March 2023 advising that they wished to proceed with the application and sought to amend the application to add in ground 12A as stated in schedule 3 of the 2016 Act that being that substantial rent arrears have accrued. This was in addition to existing Ground 12.
 8. The reasons given for the amendment of the application were as follows:
 - Very substantial rent arrears had accrued, in excess of £10,000;
 - Rent arrears had accrued continuously since November 2021, a period in excess of six months;
 - No rent whatsoever had been paid during this period;

- At least one tenant who had failed to pay, Graham Kelly, is in full time employment with OC Motor Repairs, 2 Stanley Boulevard, Hamilton International Technology Park, Blantyre, Glasgow;
 - It remains within the discretion of the Tribunal whether or not to grant the Application under paragraph 12A.
9. A case management discussion was assigned for today and copies of the application and papers and notification of the case management discussion was served on all parties. The Respondents were advised that they were required to submit any written representations by 11 May 2023.
10. In the notification letters to the respondents they were advised:
“The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”
11. No written representations have been received from the Respondents.

The Case Management Discussion

12. The case management discussion took place today by teleconference. Mr Alan Hutcheson of Hutchesons Solicitors appeared on behalf of the Applicant. There was no attendance by, or appearance on behalf of, the Respondents.
13. Mr Hutcheson asked the Tribunal to amend Ground 12A in to the application as per his previous written request. His submissions on the reasonableness of the Tribunal granting this amendment were that the Applicant’s agents had inadvertently used the wrong Notice to Leave form. They were aware of the new eviction ground 12A of substantial rent arrears introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 but had not appreciated that there was a new ground 12A and thought that the eviction ground of substantial rent arrears would just be dealt with under ground 12. Their submission was that there had not been any rent paid at all since November 2021, rent arrears now stood at the sum of £12,300, there had been no attempts by the Respondents to pay any of the arrears of rent or rent payments and there was no prejudice caused to the Respondents as the Applicant could have relied upon Ground 12A on the Notice to Leave. The Applicant’s position was that at least one of the Respondents was in full time employment, the Respondents had no known vulnerabilities, one of the Respondents was receiving benefits but had already vacated the Property, the Respondents had been in touch that morning to say that the keys to the Property would be returned imminently but they had stated this before and it then never happened. In all the circumstances, it was reasonable for the Tribunal to allow that amendment of the application to state Ground 12A as being the eviction ground relied upon.

14. In respect of the reasonableness of the eviction, which was necessary to be established whether Ground 12A or Ground 12 was being relied upon as the eviction ground, the Applicant's agent advised that, as well as the letter dated 19 August 2022, there had been other dialogue between the parties which, taken as a whole, demonstrated the Applicant's compliance with the pre-action requirements for evictions on the grounds of rent arrears. His submission was that the Respondents were just sitting it out not paying any rent until an eviction order was granted by the Tribunal. The Applicant was suffering financial hardship. He still had duties to fulfil as a landlord. There had been no payments at all of rent since November 2021 and sporadic payments of rent from January 2021. The Applicant's agent understood that full payments of rent had been received from the Respondents from the commencement of the tenancy agreement in February 2018 until January 2021. Rent arrears now stood at the sum of £12,300. The Applicant's agent was unaware of any vulnerabilities in respect of the Respondents. He believed that the two Respondents were the only people residing at the Property. He believed that the first Respondent had moved out of the Property and was in full time employment. He was unsure whether the second Respondent still resided at the Property and believed him to be in receipt of benefits. Should the Tribunal permit the amendment of the application to Ground 12A as being the eviction ground then the Applicant was not seeking an immediate enforcement but was content for any execution of the eviction order to be deferred for a period of three weeks.

Findings in Fact

15. The Tribunal made the following findings in fact

- The Applicant is the owner of the Property;
- The parties entered into a private residential tenancy agreement from February 2018;
- The agreed monthly rent was £550;
- Rent arrears began to accrue from January 2021;
- The Applicant served the Respondent with a valid Notice to Leave on 5 December 2021;
- The Notice expired on 6 January 2023;
- The rent arrears on 5 December 2021 were £9000;
- The rent arrears at today's date are £12,300.

Reasons for Decision in respect of application to amend eviction ground to ground 12A

16. The Tribunal took into consideration the evidence and written submissions contained in the papers and the oral submissions of the Applicant's agent today. The Tribunal did not have the benefit of any oral or written submissions from the Respondents and they did not take part in the case management discussion. There was nothing to dispute the evidence before the Tribunal. In determining whether it was reasonable to grant the application to amend, the Tribunal took into account the level of rent arrears, the fact that no payments of rent had been made since November 2021, the financial hardship caused to the landlord, the fact that no prejudice had been caused to the Respondents, the Respondents had had notice of the request to amend when served with the

application papers and notice of the case management discussion but had not indicated any objection to the amendment, the indication on the part of the Applicant that he was content with a three week deferment of execution of any eviction order under Ground 12A. The Tribunal balanced up with the late notice of the amendment. In all the circumstances it was reasonable to allow the amendment to the application to rely on eviction Ground 12A.

Reasons for Decision in respect of eviction application

17. The Tribunal took into consideration the evidence and written submissions contained in the papers and the oral submissions of the Applicant's agent today. The Tribunal did not have the benefit of any oral or written submissions from the Respondents and they did not take part in the case management discussion. There was nothing to dispute the evidence before the Tribunal.

18. Ground 12A of Schedule 3 of the 2016 provides:

12A Substantial rent arrears

(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).”

19. In determining whether it was reasonable to grant the eviction order, the Tribunal took into account the level of rent arrears, the fact that no payments of rent had been made since November 2021, the financial hardship caused to the landlord, the indication on the part of the Applicant that he was content with a three week deferment of execution of any eviction order under Ground 12A and the fact that it appeared that the first Respondent was in full-time employment and the second Respondent was in receipt of benefits. The Tribunal balanced up the lack of complete compliance with the pre-action requirements for evictions on grounds of rent arrears noting that further dialogue had taken place between parties including texts indicating that the

Respondents intended to remove imminently from the Property. In all the circumstances, it was reasonable to grant the order for eviction.

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.

A Mathie

26 May 2023

Legal Member/Chair

Date