

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/21/1749

Re: Property at 9 Leyland Road, Motherwell, ML1 3FX (“the Property”)

Parties:

Mr Joseph Smith, Mrs Karen Smith, 12 Glen Noble, Cleland, ML1 5FB (“the Applicant”)

Joanne Leonard, 9 Leyland Road, Motherwell, ML1 3FX (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicants to the Respondent commencing on 31 May 2018.
2. The application was dated 21 July 2021 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 15 January 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by Recorded Delivery (“Signed For”) post on that date and delivered on 16 January 2021 in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act,

being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to a “transaction report” which was provided and showed arrears of £3,180, being a shortfall of rent of £220 in the rent due on 31 August 2020 plus unpaid rent of four months from 30 September 2020. The rent due under the PRT is £725 per month due in advance on the last day of each month but parties agreed that this had been validly increased to £740 per month which was the rent set out in the “transaction report”. The Notice intimated that an application to the Tribunal would not be made before 18 July 2021.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council on 21 September 2021 was provided with the application. Evidence of the Applicants’ letting agent providing pre-action protocol information to the Respondent by letter on 15 January 2021 was further provided in the application papers.

The Hearing

5. The matter called for an initial case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 14 January 2022. We were addressed by the Applicants’ and the Respondent and, as discussed below, we continued the CMD.
6. The continued CMD called, also by remote telephone conference call, on 3 March 2022. At that only the Applicants were in attendance. There was no appearance for the Respondent. We were informed that no contact had been received from the Respondent (or on her behalf, or from any agency enquiring after her) since the original CMD. The Applicants knew of no attempted contact with their letting agent. The Applicants had made no attempt to contact the Respondent. The last contact was thus at the CMD of 14 January 2022. We considered that the Respondent had received clear intimation of the continued CMD and, having not commenced the CMD until around 10:10, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
7. At the continued CMD, the Applicants confirmed that the application for eviction was still insisted upon. They stated that arrears had continued to accumulate and, by 3 March 2022 they held that £12,800 was due. We note that this is over 17 months’ rent in total. (At the continued CMD, we discussed with the Applicants that, on the basis of further information they had emailed to the Tribunal on 4 February 2022, we thought their figures suggested arrears to 3 March 2022 were £13,540. The Applicants agreed with our calculations at the continued CMD. On reviewing matters when preparing this Written Decision, we noted that parties had agreed at the initial CMD that the outstanding amount as at 14 January 2022 was £11,320. Therefore £12,800 is indeed the correct amount as at 3 March 2022.)

8. The Applicants were unaware of any application by the Respondent for benefits other than what had been discussed at the original CMD. The Applicants believed the Respondent and her family remained in occupation.
9. No motion was made for expenses.
10. We adjourned briefly and reconsidered the information provided by the Respondent at the CMD of 14 January 2022. It is set out in greater detail in the Note of that CMD but, in short:
 - a. The Respondent acknowledged the significant arrears and provided details of a number of issues that had affected her income and ability to attend to the situation.
 - b. The Respondent was a midwife but had not worked in a number of years, as she had taken a career break to raise her family.
 - c. She had a daughter of 20 who lived independently in her own accommodation. She had dependent children of 12, 15 and 16 who still lived with her.
 - d. The Respondent was separated from her husband and was seeking a divorce, in which she expected a financial settlement once matters were concluded.
 - e. She received little to no contribution from her husband towards costs at present.
 - f. The Respondent was in receipt of Universal Credit (“UC”) and had been since October 2020. This paid household bills. She could not recall if it included an element for housing costs.
 - g. The Respondent kept in poor physical health. She had been hospitalised twice over recent years and had a low immune system.
 - h. The Respondent had poor mental health, with depression and anxiety. She had lost her mother in the recent past. She accepted that she had “put her head in the sand” over her financial difficulties with the Tenancy.
 - i. The Respondent had submitted a claim for Personal Independence Payment (“PIP”) (both for daily living costs and mobility costs) around October 2021 but had not yet received the outcome of the claim.
 - j. The Respondent did not have a social worker or benefit adviser. She had not sought legal advice from her family law solicitor on the matters, as she was conscious about the costs of further legal fees.
 - k. The Respondent confirmed that she was unlikely to work again in the near future due to her medical conditions, was reliant on benefits, but anticipated some financial settlement from her divorce though she was uncertain when this would occur. She did not expect a payment from any inheritance following her mother’s passing. In regard to the guarantee from her father seen in the application papers, the Respondent explained that her father had retired since granting it and now lived off a pension.

11. We had continued the initial CMD, and issued a Notice of Direction, principally to allow the Respondent to provide updates and vouching on her financial position, and consider any proposal to the Applicants. She had provided none. At the time of the initial CMD, we were concerned that the PIP claim, even if awarded in the maximum, would not cover ongoing rent and any back-dated award would not cover the arrears. The Respondent did not have any information to counter that and, as we say, provided none further to the Directions. We also urged the Respondent to discuss matters with her father, as the guarantor. She undertook to do so but we received no update from her on this either.

Findings in Fact

12. On 31 May 2018, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on that date ("the Tenancy").
13. In terms of clause 4 of the Tenancy Agreement, the parties agreed that hard copy by personal service or recorded delivery could be used for communication of notices in terms of the Tenancy.
14. On 15 January 2021, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondents with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £3,180.
15. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 18 July 2021.
16. The Applicants' agent served a copy of the Notice to Leave on the Respondent by recorded delivery on 15 January 2021.
17. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on the Applicants' behalf.
19. The Applicants' agent provided the Respondent with suitable pre-action protocol information by letter on 15 January 2021.
20. As of 3 March 2022, the Respondents remained in arrears of rent in the amount of £12,800 which is the equivalent of over 17 months of rent.
21. The Respondent does not claim to have paid any amount of the arrears remaining as at 3 March 2022.

22. The sum of arrears remaining as of 3 March 2022 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
23. On 14 January 2022, the Tribunal intimated during a CMD to the Respondent the date and time of the CMD of 3 March 2022.

Reasons for Decision

24. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent. Further, at the original CMD no objection to this was taken by Respondent.
25. Ground 12 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - (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.*
26. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. We considered at the original CMD whether the Respondent's difficulties with benefits permitted us to refuse an order under Ground 12. We held that it did not. PIP is not a "relevant benefit" in terms of ground 12 and, even if there were prospects of a claim to increase UC to include (or increase) the housing component, any delay in doing so would arise from the Respondent having failed to investigate that to date.
27. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the increased amount and duration of the arrears. At the continued CMD, the Applicants explained that they had required to take out personal loans to support their income, in the absence of the expected rental income from the Property since October 2020.

28. The Respondent's submissions at the original CMD gave us substantial pause in considering whether it was unreasonable to evict the Respondent. The Applicants did not dispute any of the Respondent's information and it seemed clear that the Respondent had medical issues that stopped her working, and the unresolved family law matters meant she had assets she was unable to access. For all these reasons, the Respondent was provided ample time to give further information to support her submissions, and provide a proposal to the Applicants and ourselves as to how she would seek to resolve matters. For whatever reason, she has failed to do so in any way. We are very conscious that the medical issues that the Respondent detailed at the original CMD may have stood in her way from complying with the Directions or attending at the continued CMD. Nonetheless, we cannot assume that is the case and require to deal fairly with both sides. We are currently presented with a tenant who has not paid in over 17 months, has no proposal to make ongoing payments, has no proposal to pay arrears, and has ceased to communicate with the Tribunal. Despite the potential remedy (or partial remedy) that a benefits claim or claims may present for the Respondent, we have no firm information on such matters and they are not, in terms of Ground 12, issues with any delay in "relevant benefits". They are only relevant in terms of considering reasonableness.
29. We did have reservations as to whether the letter of 15 January 2021 was sufficient in terms of the pre-action requirements. It was somewhat scant, and focused on the Respondent's duties in leaving the Property. There were further demand letters before and after that letter which added little except to clarify the outstanding arrears. Augmented, however, by those letters and the information within the Notice to Leave itself, we were satisfied that in round the letter of 15 January 2021 was sufficient and, in any case, the Respondent had been amply guided as to her position and options at the initial CMD.
30. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicants and reasonable to grant. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

31. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that Act.

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.

J. Conn

3 March 2022

Legal Member/Chair

Date