



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1331

Re: Property at 2 Fraser Place, Keith, Moray, AB55 5EB (“the Property”)

Parties:

Mrs Una Geddes, Mr Gilbert Geddes, Nether Corskie Croft, Dunecht, Aberdeenshire, AB32 7EL (“the Applicant”)

Kelly Dunton, Mr Dale McDonald, 2 Fraser Place, Keith, Moray, AB55 5EB; 2 Fraser Place, Keith, Aberdeenshire, AB55 5EB (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Grounds 11 and 12 of Schedule 3 of the Act in that the Respondents have been in arrears of rent for three or more consecutive months and have failed to comply with an obligation under the tenancy agreement and it is reasonable to grant an eviction order on account of these facts.

The decision of the Tribunal was unanimous.

Background

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 6th May 2022 and accepted by the Tribunal on 6th June 2022. A case management discussion was fixed for 18th August 2022 at 2pm.

Case Management Discussion

2.Both of the Applicants attended the case management discussion and were represented by Mr Liddiard solicitor of Stewart and Watson solicitors. There was no appearance by or on behalf of the Respondents and the Tribunal members noted that both of the Respondents had been served personally with the application and papers by Sheriff officers on 18th July 2022.Mr Liddiard moved the Tribunal to proceed in their absence and this request was granted given that the application and papers had been properly served and the Respondents had received fair notice of the case management discussion.

3.The Tribunal members had sight of the Application, a paper apart, a copy disposition, a Notice to Leave, a recorded delivery postal slip in respect of the Notice to leave along with a track and trace receipt, a rent statement, letters sent to the Respondents in December 2021 correcting an error as to the date when the notice period in the Notice to Leave expired, a copy of a payment order of the First Tier Tribunal, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a letter intimating this to Moray Council. The Tribunal also had sight of a letter sent to the Respondents in December 2021 in terms of the rent arrears pre action protocol.

4.Mr Liddiard advised that the Respondent entered into a private residential tenancy with the Applicants at the property with effect from 1st December 2017.The monthly rent in terms of the tenancy agreement was £450 and arrears started to accrue in August 2019.At the time the Notice to Leave was sent the arrears were in excess of 6 months' rent payments. In March 2022 the arrears stood at £4628.23, and this was the sum awarded to the Applicants by the Tribunal in terms of a payment order application on 5th April 2022.Since that date a further £2250 had accrued in terms of rent arrears.

5.The Applicants' solicitors had sent a letter in December 2021 to both Respondents setting out the full arrears statement and giving them information regarding benefits and signposting them to assistance which might be available to them in terms of advice and support. This letter gave an incorrect date for the expiry of the Notice to Leave and another letter was sent on the same date to the Respondents correcting this error.

6.The Respondents were not employed and were understood to receive universal credit and Economic Impact Payments. They had paid the rent directly when it was paid. They had two children, one over the age of 16 and another believed to be about 14 or 15.The failure to pay the rent has impacted on the Applicants. They had required to install a new boiler at the property in 2021 and carry out repairs and they relied on the income from the rent in order to pay for these costs.

7.As far as the last contact with the Respondents Mrs Geddes indicated that she had emailed them to say that gas fitters would be attending to carry out a survey for the boiler and this email was unanswered so was followed up with a recorded delivery letter. This took place in 2021.

8.Prior to that there was no regular contact. Mrs Geddes had emailed a few times regarding the rent arrears, but this had attracted no response from the Respondents

9. In August 2021 the new boiler had been fitted at the property and Mrs Geddes has required to be at the property. She raised the issue of the rent on that day and the Respondent Kelly Dunton indicated that the rent should have been received. Mrs Geddes confirmed that the rent had always been paid by universal credit and Kelly Dunton had told her that she would apply for the rent payment to be made directly to the Applicants, but this never happened.

10. At the start of the tenancy payments were being made and at no time had the Respondents ever suggested there was an issue with a failure of payment or delay with their benefits. No rent payments had been made since July 2021.

11. The Applicants' solicitor had received contact from Moray council regarding the S11 Notice and it appeared as though the Respondents may have applied to be rehoused but this was not certain.

12. The Tribunal Legal member raised the Notice to Leave and the date in Part 4 which appeared to be 27th April 2022. In terms of section 62(4) of the 2016 Act the tenant is assumed to receive the notice if sent by post or email 48 hours after it is sent. In this application the notices were posted on 22nd October 2021 and would have been assumed to be received on 24th October 2021. The six month notice period would have expired on 24th April 2022 and so the date in part 4 of the Notice should have been 25th April 2022. Instead it appeared to be 27th April 2022. The notice appeared to give the Respondents a longer period than that required for the earliest date that the Applicants could apply to the Tribunal and they had complied with the minimum statutory notice period and had not applied to the Tribunal during the notice period. Given these factors Mr Liddiard requested that the matter be treated as a minor error in the Notice in terms of section 73 of the Act which did not affect the validity of the Notice to Leave.

13. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The Applicants and Respondents entered into a private residential tenancy at the property on 1st December 2017.

15. The monthly rent payable in terms of the tenancy agreement was £450 payable in advance.

16. Clause 7 of the tenancy agreement requires the Respondents to pay the monthly rent in advance and they have failed to comply with this clause.

17. Rent arrears in terms of the tenancy started to accrue in 2019 and when the Notice to Leave was served they stood at £2625, more than 6 months' rent.

18. As of March 2022 the rent arrears stood at £4628.23, and the Applicants obtained a payment order in that sum from the First-Tier tribunal on 5th April 2022.

19.The rent arrears have increased by £2250 since that time.

20.The rent when paid was paid direct to the Applicants by the Respondents who were in receipt of universal credit.

21.There is no information to suggest that the rent arrears are due to any delay or failure in the payment if a relevant benefit.

22.The Applicants are impacted financially by the continued rent arrears.

23.Attempts to engage with the Respondents regarding the rent arrears have been unsuccessful

24.The Applicant served a notice to Leave with the correct notice period on the Respondents.

25.This Notice to leave contained a minor error in the date in Part 4 which did not affect the validity of the notice.

26.A notice in terms of section 11 of the Homelessness etc Scotland Act 2003 was served on Moray council in relation to this application.

27.A letter in terms of the Rent Arrears pre-Action protocol requirements as referred to in Ground 12 of the Private Housing (Tenancies)(Scotland) Act 2016 was sent to the Respondents in December 2021.

Reasons for Decision

28.The Respondents have accrued substantial rent arrears at the property and have failed to engage with the Applicants regarding the outstanding rent and a payment order in relation to rent arrears has been granted. The Applicants are financially impacted by the failure to pay the rent. The eviction ground in terms of Ground 12 is made out and it appeared reasonable to grant the order. The Notice to Leave contained a minor error in terms of the date in Part 4 but this gave additional notice rather than less than the notice period required and tribunal decision of Holleran v McAlister applies (FTS/HPC/EV/18.2321).The Applicants also sought eviction in terms of Ground 11 given that the Respondents have breached a term of the tenancy by their failure to pay rent payments as required.

Decision

29.The Tribunal granted an eviction order in terms of Grounds 11 and 12 of Schedule 3 of the 2016 Act in that the Respondents have been in arrears of rent for three or more consecutive months and have failed to comply with an obligation under the tenancy agreement and it is reasonable to grant an eviction order on account of these facts.

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.

Val Bremner

18.8.22

Legal Member/Chair

Date