



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 Act”)

Chamber Ref: FTS/HPC/EV/21/2290

Re: Property at 71 Flat 2/2, Causeyside Street, Paisley, PA1 1YT (“the Property”)

Parties:

Mr Charlie Caldwell, 25 Alloway Grove, Paisley, PA2 7DQ (“the Applicant”)

Mr Alan Wright, 71 Flat 2/2, Causeyside Street, Paisley, PA1 1YT (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. By application dated 20 September 2021, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 13 December 2021 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 18 February 2022 and appropriate intimation of that hearing was given to both the landlord and the tenant.

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 18 February 2022 via telephone case conference. The applicant was represented by his letting agent, Ms Darryl Harper of Castle Residential, 63 Causeyside Street, Paisley PA1 1YT. The Respondent did not attend.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the applicant's representative with regard to the application and the grounds for eviction contained within it.
6. The applicant's representative confirmed that she wished the order sought to be granted.

Findings in Fact

7. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 15 May 2020.
8. The tenancy was a private residential tenancy in terms of the Act.
9. The agreed monthly rental was £375.
10. On 18 February 2021 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice became effective on 25 August 2021.
11. The notice informed the tenants that the landlord wished to seek recovery of possession using the provisions of the Act.
12. The notice was correctly drafted and gave appropriate periods of notice as required by law.
13. The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant had been in arrears of rent for three or more consecutive months.
14. Arrears had started to accrue shortly after the commencement of the tenancy and at the date of service of the Notice to Leave amounted to £2230.06.
15. At the date of the lodging of the application arrears amounted to £4192.56
16. At the date of the CMD the arrears amounted to £6067.56.

17. The tenants had been continuously in arrears from July 2020 until the date of the CMD.
18. The amount of arrears exceeded one month's rent at the date of the CMD.
19. The basis for the order for possession was accordingly established.

Reasons for decision

20. The order for possession was sought by the landlord on a ground specified in the Act and properly narrated in the notice served upon the tenant.
21. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.
22. The tribunal accepted the unchallenged evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears.
23. The ground for eviction under which this application was made is the ground contained in paragraph 12 of schedule 3 of the Act. The ground is that the tenant has been in arrears of rent for three or more consecutive months and at the date of the hearing owes more than one month's rent. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
24. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact
25. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
26. In this case the tribunal finds that it is reasonable to grant the order.
27. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. The landlord's representative indicates that she believes the tenant is working. The landlord has complied with the matters set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Appropriate information was provided to the tenant. A repayment plan was agreed in June 2021 but the tenant failed to maintain it. No explanation has been provided by the tenant regarding the arrears.
28. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significantly in

excess of one month's rent. The ground for eviction was accordingly established and the tribunal found that it was reasonable in terms of the provisions of the 2016 Act to grant the order sought.

29. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.



18 February 2022

Legal Member/Chair

Date