



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”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/22/0140

Re: Property at 23 Sprotwell Terrace, Sauchie, Alloa, Clackmannanshire, FK10 3LB (“the Property”)

Parties:

Miss Siu Yi Madeline Yeung, 26 Wilson Drive, Hawick, Roxburghshire, TD9 8HP (“the Applicant”)

Mr Kieran Barclay, 23 Sprotwell Terrace, Sauchie, Alloa, Clackmannanshire, FK10 3LB (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (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 recovery of possession of the property be granted.

Background

1. By application received 18 January 2022, the Applicant sought an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave served on the Respondent, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £5,585.16 and copies of correspondence to the Respondent from the

Applicant's letting agent in respect of the rent arrears. A separate application for payment of said rent arrears was also lodged.

2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 15 March 2022. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion ("CMD") were intimated to both parties, advising of the date by which any written representations should be lodged (27 April 2022). Said notification was served on the Respondent personally by Sheriff Officer on 7 April 2022. No representations were lodged by the Respondent.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place before the Tribunal Members by telephone conference call on 23 May 2022 at 10am, attended by the Applicant only. The start of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
2. After introductions and introductory remarks, the Applicant was asked to address the application and confirmed that she was seeking an eviction order against the Respondent in respect of rent arrears exceeding three months. She advised that, despite the Notice to Leave having been served by her letting agent on her behalf and the appropriate period of notice being given, the Respondent remains in occupation and that the rent arrears have continued to rise, such that there are now arrears of over £8,000.
3. The Applicant explained how the arrears had arisen, that the rent is £450 per month, that there were periods when payments were missed altogether and that, since August 2020, only partial payment of the rent each month has been made which she has received directly from the DWP. She receives £322.07 from the DWP every month (with the exception of January 2022 when she received no payment) and is still in receipt of that monthly sum. This leaves a shortfall in the rent of £127.93 every month. The Applicant confirmed that her letting agents, Martin & Co, dealt with the rent arrears situation with the Respondent as part of the property management services they provide to her. They also issued the pre-action requirements letters to the Respondent and served on him the Notice to Leave and the Section 11 Notice to the local authority on her behalf. They are still her letting agents and she still pays them their monthly management fee, although she is dealing with these applications to the Tribunal herself. Martin & Co did not get any cooperation from the Respondent in relation to the rent arrears and no further payments were forthcoming. The Applicant herself did not have any direct contact with the Respondent regarding the rent arrears, although she advised that she had emailed him twice, once regarding a stain on a carpet and subsequently, to advise that she was having to consider putting the house on the market due to her own financial situation. She did not receive any response from the Respondent. She knows that the Respondent lost his employment previously,

before the pandemic, and thinks he lost another job during the pandemic and presumes he is still unemployed as he is clearly in receipt of benefits.

4. Reference was made to the handwritten rent statement that the Applicant had submitted with her application and it was noted that this contains a breakdown on how the figure of £5,585.16 was calculated. There was some discussion regarding some discrepancies in the figures between the Statement of Account prepared by her letting agent and her own breakdown of the arrears, particularly with regard to the amount of arrears stated as owing as at July 2020, prior to the direct payments from DWP starting to be made to the Applicant direct. The Applicant explained that there had been some errors made by a former member of staff at the letting agents in the statement of accounts, that the Applicant had had to go through it all and calculate the accurate figure for the arrears and that it is her own figures contained in the Rent Statement which are correct and should be relied on. It was noted by the Tribunal that the letting agents appeared not to have included in their Statement of Account the rent payments due for the 5 month period March to July 2020 inclusive which would amount to £2,250 and that this figure exceeds the amount of the discrepancy referred to above. It was also noted that the letters from the letting agents to the Respondent which have also been lodged with the Tribunal do make reference to rental payments being due for the months March to July 2020. The Applicant confirmed that no further payments, either from the Respondent himself, nor from the DWP on his behalf, had been received, other than those shown in the various statements produced.
5. It was explained to the Applicant that, apart from being satisfied that the rent arrears ground for eviction is established, the Tribunal also has to be satisfied that it is reasonable in all the circumstances of the case for an eviction order to be granted. In this regard, the Applicant advised that the Respondent's failure to pay the rent has contributed to her own financial circumstances being very tight. She explained that she also lost her employment during the pandemic and that, although she has obtained another job, she does not have the same amount of hours every month and it is low paid work in a restaurant kitchen. She lives with her grown up daughter in a rented property and her daughter is not working and is only in receipt of Universal Credit. Apart from this property, she owns another property in East Ayrshire which she lets out to an elderly couple but it is just a one bedroom property and the rent received is not very high. She does not require to pay a mortgage in respect of either of these properties but she does have to meet her own rent, as well as other costs in relation to the two other properties and general living costs which are increasing. She does not know much about the Respondent's financial position, other than she thinks he is currently still unemployed. Someone living near the Property told her that a female and some children have been seen at the Property from time to time. She thinks this may be the Respondent's partner and her children and that they do not live with the Respondent on a full-time basis. The Applicant referred to the length of time the rent arrears situation with the Respondent has been going on, that the arrears are considerable, that many months' of rent have been missed altogether and that, although partial monthly payments are being received from the DWP, there is a shortfall every month which means the arrears are continuing to increase. This is impacting

her own finances so much that she sought advice from her letting agent about selling the Property but cannot do so because the Respondent is still living there. Nor can she live in that Property herself for the same reason and feels that she is essentially stuck. She referred to the fact that the Respondent has failed to engage at all with both the letting agent and herself, that the pre-action requirements have been met as per all the letting agent letters lodged with the Tribunal, that the Respondent has not made any payment proposals in respect of the arrears and has failed to leave the Property despite being given a lengthy period of notice.

6. As regards the Section 11 Notice to the local authority, it was noted that, although proof of service of the Notice to Leave on the Respondent by email from the Applicant's letting agent had been produced to the Tribunal, proof of service of the Section 11 Notice appeared not to have been produced, although had been requested by the Tribunal. The Applicant confirmed that Martin & Co had served the Notice on Clackmananshire Council by email (which she has seen a copy of) and also followed this up by Recorded Delivery post. She is unaware whether the local authority contacted Martin & Co in response.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 21 June 2019.
3. The Respondent continues to occupy the Property.
4. The rent in terms of the lease is £450 per calendar month.
5. The rent was initially paid regularly by the Respondent to the Applicant's letting agent but there were then periods when payments were missed altogether and rent arrears accrued.
6. From August 2020 to date (apart from in January 2022), the Applicant has received direct payments from the DWP towards the Respondent's rent amounting to £322.07 per month.
7. There is a shortfall of £127.93 per month in the rent so arrears are continuing to accrue.
8. A Notice to Leave dated 31 March 2021 referring to Ground 12 of Schedule 3 to the 2016 Act, was served on the Respondent by email on that same date, in accordance with the terms of the lease, at which point there had been rental arrears owing for in excess of 3 consecutive months.
9. The date specified in the Notice to Leave as the end of the notice period was 3 October 2021.

10. The Tribunal Application was received by the Tribunal on 18 January 2022.
11. The rent arrears now owing are in excess of £5,585.16.
12. The Respondent has been called upon to make payment of the rental arrears but has failed to do so.
13. The Respondent has not engaged with the Applicant nor her letting agents and has not responded to the Tribunal application nor made any payment proposals.

Reasons for Decision

1. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. There was accordingly no issue taken and no contradictory evidence put forward in respect of the application by the Respondent.
2. The Tribunal was satisfied that the Notice to Leave was in correct form, served by appropriate means, gave the requisite period of notice of 6 months (in terms of the Coronavirus restrictions in place at the relevant time), that these Tribunal proceedings were thereafter brought timeously, after the date specified in the Notice to Leave, all in accordance with the terms of the Lease and the relevant provisions of the 2016 Act.
3. The Tribunal was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant at the CMD that all aspects of Ground 12 of Schedule 3 to the 2016 Act, as amended, had been met, as follows:-

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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.

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

(i)a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii)a payment on account awarded under regulation 91 of those Regulations,

(iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

4. In respect of the 'reasonableness' test (Ground 12 (3)(b) above), the Tribunal considered the whole circumstances of the case before it as outlined in the paragraphs under the heading "Case Management Discussion" above, including weighing the impact on the Applicant if the eviction order were not to be granted against the impact on the Respondent (as far as known) of the eviction order being granted; the personal and financial circumstances of the Applicant; the fact that the 'pre-action requirements' had been implemented by the Applicant's letting agent on her behalf; the failure of the Respondent to engage with the Applicant, her letting agent and the Tribunal process, the length of the notice period the Respondent had been given and the length of time the rent account had been in arrears and the substantial level of arrears which are continuing to increase on a monthly basis. In addition, there was nothing to indicate to the Tribunal that the arrears were due to a failure or delay in benefits being paid to, or on behalf of, the Respondent. The Applicant has been receiving regular monthly payments from the DWP towards the rent for a significant period of time.
5. The Tribunal concluded that the application does not require to go to an evidential hearing and that an order could properly be made at the CMD for recovery of possession of the Property.
6. The decision of the Tribunal was unanimous.

Decision

The Tribunal accordingly determined that an order for possession of the Property should be granted.

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.

Nicola Weir

Legal Member/Chair

23 May 2022

Date