



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/21/2481

Re: Property at 50 Union Street, New Stevenson, Motherwell, North Lanarkshire, ML1 4HF (“the Property”)

Parties:

Mr David Murray, 11 Kilmore Grove, Coatbridge, ML5 5JU (“the Applicant”)

Mrs Leeanne Hewitt, 50 Union Street, New Stevenson, Motherwell, North Lanarkshire, ML1 4HF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application, received by the Tribunal on 11 October 2021, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 24 July 2020, at a rent of £595 per month, and a copy Rent Statement showing arrears of £1,535 at 24 September 2021. The Statement showed that the first month’s rent had been paid in full, but that only £300 had been paid in the second month and that the rent had been continuously in arrears since then. The Applicant provided a copy of an Order for Payment of the sum of £1,310, made by the Tribunal on 30 March 2021.

3. The Applicant also provided the Tribunal with a copy of an email from the Applicant's letting agents to the Respondent dated 7 April 2021, with which they enclosed a Notice to Leave. The email stated that the Applicant was very much open to working with the Respondent to retract the Notice to Leave and to allow the Respondent to remain in the Property, but that this could only be done by a formal payment plan being drawn up, agreed and strictly adhered to. The Applicant's letting agents urged the Respondent to look at their previous payment plan again.
4. The Notice to Leave was dated 7 April 2021, informed the Respondent that the Applicant was seeking eviction under Ground 12 of Schedule 3 to the 2016 Act, and that an application would not be submitted to the Tribunal for an Eviction Order before 10 October 2021.
5. On 18 November 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 9 December 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussions

6. A Case Management Discussion was held on the afternoon of 22 December 2021. The Applicant was represented by Mr Paul Clark of Aquila Management Services Limited, Airdrie. The Respondent was not present or represented.
7. The Tribunal Members stated that they were satisfied that the requirements for establishing Ground 12 of Schedule 3 to the 2016 Act had been met. The only issue for the Tribunal to consider was, therefore, whether, in terms of the Coronavirus (Scotland) (Act) 2020, it was reasonable to issue an Eviction Order.
8. Mr Clark told the Tribunal that the rent arrears now stood at £1,825. Some months ago, the Respondent had said that she would reduce the arrears by £100 per month. The Applicant had accepted this, but the Respondent did not make any payments to reduce the arrears. The Applicant's letting agents, having approached the Department for Work and Pensions, were receiving the Applicant's Local Housing Allowance each month, but this was £450, leaving a shortfall each month of £145. The Respondent had made payments towards that shortfall in July and October 2021 but had not made any payments towards the arrears that had already accumulated. The letting agents had done everything they could, including sending regular letters to the Respondent, following a style provided by the Scottish Association of Landlords, signposting the Respondent to various sources of possible assistance. If the Order was not issued, the arrears would simply continue to increase. The Applicant had a full mortgage on the Property, so was adversely affected by the Respondent's ever-worsening arrears situation. Mr Clark understood that the Respondent had a part-time job and was receiving top-up benefits payments, and that she had two children living with her.

9. After Mr Clark left the conference call, the Tribunal Members considered all the evidence before them. The Tribunal was concerned that the Applicant had not provided evidence of compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Tribunal accepted that the letters to which Mr Clark had referred, following a style provided by the Scottish Association of Landlords, might indicate compliance with the Regulations, but it would be necessary both for the Tribunal to see those letters and for the Respondent to be given an opportunity to comment on them. Accordingly, the Tribunal decided to adjourn the case to a further Case Management Discussion and meantime to issue Directions to the Parties.
10. On 7 December 2021, the Applicant's letting agents, in accordance with the Direction made by the Tribunal on 22 November 2021, provided the Tribunal with copies of letters to the Respondent dated 9 July, 26 July, 26 August, 1 October, 26 October and 3 December 2021, all of which signposted the Respondent to various sources of help and advice and set out a suggested payment plan. They also provided an updated Rent Statement showing arrears as at 24 December 2021 of £1,970. This correspondence was copied to the Respondent, who did not thereafter make any written representations to the Tribunal.
11. A second Case Management Discussion was held on the morning of 9 February 2022. The Applicant was again represented by Mr Clark. The Respondent was not present or represented.
12. Mr Clark told the Tribunal that, since the date of the first Case Management Discussion, no payments had been received from the Respondent either to meet the monthly shortfall between the housing element of her Universal Credit (the Local Housing Allowance) and the monthly rent, or to reduce the arrears, which now exceeded £2,000. They had, however, been contacted in respect of the Tenant Grant Fund, set up to support tenants who have incurred rent arrears as a direct result of the Covid-19 pandemic. The Fund had offered to pay the sum of £1,390 towards the arrears, but this would only cover the period to 9 August 2021, leaving arrears still in excess of £700. Apart from one payment of £200 in October 2021, the only money which had been received since July 2021 had been Universal Credit, paid directly to the Applicant. The Respondent was not paying anything towards the monthly shortfall of £145 between the Universal Credit payment and the rent, and was not paying anything towards reducing the rent arrears. As a consequence, the arrears figure was increasing by £145 per month and the Respondent had completely failed to engage with the Applicant or his letting agents.
13. Given the Respondent's failure to pay anything for many months, Mr Clark was not optimistic that the position would change after the Tenant Grant Fund payment was received, so was still instructed to seek an Eviction Order, but he asked that the ability to enforce it be delayed for a period of three months. This would allow the Respondent one final opportunity to agree and comply with a payment plan.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to determine the application without a Hearing.
15. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.
16. Ground 12 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy the tenant 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, 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 and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
17. The Tribunal was satisfied that the Respondent had been in arrears for three or more consecutive months, that the rent was more than one month in arrears at the date of the Case Management Discussion and that there was no evidence before the Tribunal to indicate that the Respondent's being in arrears was attributable in whole or in part to the delay or failure in the payment of a relevant benefit.
18. The Tribunal was satisfied from the copy letters provided by the Applicant on 6 January 2022 that the requirements of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met.
19. The Tribunal noted that it appeared that a payment of £1,390 would be forthcoming from the Tenant Grant Funds, but that would still leave arrears exceeding £700 and, apart from one payment of £200 in October 2021, the Respondent had paid nothing towards the shortfall between her Universal Credit payments and the monthly rent since July 2021 and had paid nothing towards the arrears, which were increasing at the rate of £145 per month.
20. The Tribunal noted that the Respondent had also not made any written representations to the Tribunal and had not been present or represented at either Case Management Discussion.

21. The view of the Tribunal was that, in all the circumstances of the case and taking into account all the evidence before it, the requirements of Ground 12 had been met and, given the level of arrears, the failure of the Respondent to engage with the Applicant or his letting agents, and her failure to pay anything towards making up the difference between the Universal Credit payments and the contractual rent, or to reduce the mounting arrears, it was reasonable to issue an Eviction Order. At the request of the Applicant's representative, the Tribunal agreed to delay enforcement of the Order for a period of three months
22. The Decision of the Tribunal was unanimous

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.

George Clark

Legal Member/Chair

9 February 2022
Date