



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/22/3300

Re: Property at 43 Temple Denny Road, Denny, Falkirk, FK6 6AW (“the Property”)

Parties:

Mr Robert Greame Burns, 9 Haypark Road, Denny, Falkirk, FK6 5JZ (“the Applicant”)

Ms Diane Campbell, 43 Temple Denny Road, Denny, Falkirk, FK6 6AW (“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 the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, dated 8 September 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 (arrears of rent over three consecutive months).

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 1 June 2018 at a monthly rent of £550, a Notice of Increase of Rent to £580 per month from 1 December 2021, and a Notice to Leave, dated 5 July 2022, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 5 August 2022. The Notice to Leave stated that the arrears stood at £5,224.61. The Applicant also provided copies of letters dated 30 April and 9 June 2021, indicating willingness to agree a

payment plan and signposting the Respondent to possible sources of help and advice, including Shelter Scotland and Citizens Advice.

In the application, the Applicant stated that the rent had been in arrears since June 2018. The Respondent had failed to adhere to a repayment arrangement whereby she would pay the monthly rent plus £80 towards arrears. The absence of rent had affected the Applicant mentally and the Applicant found himself in financial hardship as a result of not receiving the monthly rent. The Applicant's view was that in all the circumstances it was reasonable that an order for repossession should be made.

On 23 November 2022, 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 14 December 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 10 January 2023. The Applicant was represented by Ms Kirstie Donnelly of TC Young, solicitors, Glasgow. The Respondent was not present or represented.

Ms Donnelly told the Tribunal that the arrears now stand at £6,158.22. She stated that the Applicant is a self-employed joiner and that the stress caused by the long-standing arrears had affected his ability to work. There was a mortgage over the Property which he was having to fund without receiving rent. He had applied to the Tenant Grant Fund via the local authority but, as the Respondent had failed to engage in the process, the application could not progress. He was also very concerned that the condition of the Property might be deteriorating, as there was evidence of rubbish being dumped in the garden. The Applicant had tried to work with the Respondent, but she had failed to adhere to a repayment arrangement and the arrears continued to mount, as her Housing Benefit did not cover the monthly rent.

Ms Donnelly told the Tribunal that she understood that the Respondent had 5 children, aged from 9 months to 13 years, living with her, but stressed that the arrears are very high and the Respondent had not taken any steps to address matters or to engage in the Tribunal process.

Reasons for Decision

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 enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent 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 on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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.

The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal noted that the rent arrears had exceeded £4,000 since at least November 2021 and had been in arrears for more than 4 years. The arrears were very substantial and the Respondent had not made any written representations or attended the Case Management Discussion to ask the Tribunal to consider any facts or circumstances relating to the question of whether it was reasonable to issue an Eviction Order. The Tribunal also noted that the Respondent had 5 children living with her and recognised the hardship that eviction would cause to her and her family, but she had not taken the opportunities afforded to her to come to some arrangement with the Applicant and was not making up the difference between her benefits and the rent, let alone taking steps to reduce the long-standing arrears.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to issue an Eviction Order against the Respondent under Ground 12 of Schedule 3 to the 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 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

10 January 2023
Date