



Decision 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/23/1358

Re: Property at Flat 0/3, 1 New Harbour Way, Paisley, PA3 2BZ (“the Property”)

Parties:

PFPC MMR 1LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Michael Johnston, Flat 0/3, 1 New Harbour Way, Paisley, PA3 2BZ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (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 eviction should be granted.

Background

1. On 26th April 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.

2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 3rd October 2022 and a rent of £485 per month
 - b. Copy Notice to Leave dated 15th February 2023;
 - c. Copy email dated 15th February 2023 from the Applicant’s agent to the Respondent attaching Notice to Leave and Scottish Government Guidance Notes
 - d. Rent Statement

- e. PAR letter dated 17th April 2023 and copy email if the same date sending it to the Respondent
 - f. Section 11 Notice
3. The Application was served on the Respondent by Sheriff Officers on 19th June 2023.
 4. On 19th June 2023 the Applicant's agent lodged an up to date rent statement and sought to amend the sum sought to £3880. They copied their email to the Respondent.
 5. On 20th July 2023 the Applicant's solicitor lodged an application to amend the original application to introduce a new ground of eviction, Ground 12A. Ground 12A was enacted within the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place on 24th July 2023 by teleconference. The Applicant was represented by Mr Caldwell of Patten & Prentice, Solicitors. There was no attendance by the Respondent or any representative on his behalf.
7. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.
8. Mr Caldwell sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He explained that the Respondent had entered in to the tenancy agreement in September 2022. He had made the initial payment but had not paid any rent since. At the time the Notice to Leave was served the arrears were £1940, which was less than six months' arrears. At the time the application was submitted to the Tribunal the arrears were £2910, which was exactly six months' arrears. The arrears are now £4378.16, which is in excess of six months' arrears.
9. The Tribunal noted that Rule 14 of the Tribunal's rules states:

14.—(1) Where the effect of any amendment of the written representations under rule 13(1)(a) by the party would be to introduce a new issue, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

(2) Where an application is amended to include a new issue, any other party must be given an opportunity to make written representations in response to the amendment, or request the opportunity to make oral representations, by a date specified by the First-tier Tribunal which is not less than 14 days from the date on which— (a) intimation of the amendment is served; or (b) the amendment was made orally during the hearing in accordance with rule 13(2)(a).

(3) The party mentioned in paragraph (1) may also make further written representations or request the opportunity to make oral representations, by the date specified under paragraph (2).

(4) The date by which such representations must be made may, at the request of either party, be changed to such later day as the First-tier Tribunal thinks fit.

(5) The First-tier Tribunal must notify all parties of any change under paragraph (4).

(6) Where written representations are amended to include a new issue and the other party requests further time to comply with any duty under an enactment, then, the First-tier Tribunal must allow such further time as it considers reasonable.

10. In the circumstances Mr Caldwell sought a continuation of the CMD to allow the amendment to be properly intimated to the Respondent.

11. On 24th July 2023 the Applicant's solicitor sent an email to the tribunal attaching a copy of the fresh Notice to Leave dated 21st July 2023 citing Ground 12A, and a copy of the email of the same date serving the Notice on the Respondent.

Continued Case Management Discussion

12. The Continued Case Management Discussion ("CMD") took place on 26th October 2023 by teleconference. The Applicant was represented by Mr Caldwell of Patten & Prentice, Solicitors. There was no attendance by the Respondent or any representative on his behalf.

13. Mr Caldwell had sent an email to the Tribunal very shortly before the CMD began with a copy of another Notice to Leave, dated 27th July 2023, and a certificate of service by Sheriff Officers for the same date. He said that he had received a bounceback email in relation to the Notice served on 21st July 2023.

14. Mr Caldwell sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He explained that the Respondent had entered in to the tenancy agreement in September 2022. He had made the initial payment but had not paid any rent since. At the time the original Notice to Leave was served the arrears were £1940, which was less than six months' arrears. At the time the application was submitted to the Tribunal the arrears were £2910, which was exactly six months' arrears. At the time the fresh Notice to Leave was served the arrears were £4378.16, which was well in excess of six months' rental payments. The arrears are now £5876.81.

15. Mr Caldwell said that the Respondent was a 31-year-old man with no dependants. He ran a cleaning business. He had had little contact with the letting agents. He had contacted the agents when the initial notice was served claiming that he thought the rent was being paid through his business bank account. He was asked to provide bank statements for verification but failed to do so. There had been no further contact from him. Mr Caldwell said that there

had never been any indication that the respondent qualified for or had attempted to claim benefits.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 3rd October 2022;
3. The rent was then £485 per month;
4. A Notice To Leave, dated 15th February 2023, was served timeously and correctly;
5. A Pre Action-Requirement letter was sent on 17th April 2023;
6. The Application was served on the Respondents by Sheriff Officer on 19th June 2023;
7. When the Notice to Leave was served the rent was in arrears in the amount of £1940
8. When the application was lodged with the Tribunal the rent was in arrears in the amount of £2910
9. When the second Notice to Leave was served the rent was in arrears in the amount of £4378.16
10. As at today's date the rent is in arrears in the amount of £5876.81
11. The Respondent is a single man in his early thirties, with no dependants
12. There is no reason to believe that the failure to pay rent is attributable to a delay in a benefits claim being processed.

Reasons for Decision

16. Ground 12 A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 is as follows:

(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

17. The Tribunal were of the view in this case that the Applicant had established Ground 12A by virtue of the rent being in arrears in excess of six months, that this was not due to a failure in payment of benefits and that the pre action requirements had been complied with and that it was reasonable to grant the order. The tribunal considered that the level of arrears in and of itself made the granting of the order reasonable.

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.



Legal Member/Chair

26th October 2023

Date