



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/23/2359

**Re: 26 Caroline Street, Elgin, Moray, IV30 4DR
 (“the Property”)**

Parties:

**Mr David Breerton and Mrs Dawn Breerton, both of 15 Councillors Walk, Forres, IV36 1HA
 (“the Applicants”)**

**Mr Zbigniew Marek Wieczorek, of 26 Caroline Street, Elgin, Moray, IV30 4DR
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Helen Barclay (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/23/2359 took place at 10am on 12 October 2023 by teleconference call (“**the CMD**”). Mrs Breerton, one of the Applicants, was present at the CMD. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Leigh Morrissey. This case was conjoined with the case with reference FTS/HPC/CV/23/2360.

DECISION (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12 (rent arrears) of schedule 3 to the 2016 Act against the Respondent in respect of the Property.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber

Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application form dated 17 July 2023 was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicants and the Respondent dated 31 August 2019 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 14 June 2023 from Cluny Estate Agents, on behalf of the Applicants, addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that the eviction ground was “You are in rent arrears over three consecutive months”, that the Respondent had failed to pay rent from the start of March 2023, over a consecutive period of 3 months and there were arrears of £2,200 up to and including 14 June 2023, and that an application would not be submitted to the Tribunal for an eviction order before 15 July 2023.
 - c. a certificate of intimation (of service of the Notice to Leave) from James B. Booth (sheriff officer) of Walker Love which confirmed service was effected on 14 June 2023 by depositing it by means of a letterbox at the Property, together with a second certificate of intimation relating to another notice to leave, and correspondence and an invoice from Walker Love.
 - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 17 July 2023 sending it to the local authority.
 - e. pre-action correspondence from Cluny Estate Agents to the Respondent at the Property dated 21 April 2023, 2 May 2023 and 9 May 2023.
4. A notice of acceptance of the application was issued dated 7 August 2023 under rule 9 of the HPC Rules, confirming that the application paperwork had been received on 18 July 2023.
5. The Tribunal had been provided with a certificate of intimation issued by James B. Booth (sheriff officer) of Walker Love, which certified that the paperwork from the Tribunal (including notification of the date, time and dial-in details for the CMD) had been served on the Respondent on 1 September 2023 personally at the Property.
6. The possession/eviction grounds stated in the application form were: “Mr Wieczorkek is in arrears for more than 3 consecutive months totalling £2271.02 up to and including 4/08/23. We would like possession as we don’t feel the arrears will be cleared and the owner ultimately intends to sell the Property.”

7. The Respondent had not provided written representations in advance of the CMD.
8. Further documentation was provided by the Applicants by e-mail to the Tribunal's administration team on 1, 3 and 9 October 2023. The clerk confirmed that this had been crossed over to the Respondent by post on 9 October 2023. This documentation included a second notice to leave which referred to ground 1 (landlord intends to sell) and an updated rent schedule.
9. The Tribunal noted that the Applicants were the registered landlords of the Property.
10. The Tribunal also noted that the Applicants were recorded as the proprietors of the Property.
11. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

12. As a preliminary issue, the Legal Member explained that because the second notice to leave (relying on ground 1) and the updated rent schedule (seeking to amend the amount of rent arrears considered and claimed) had been received less than 14 days in advance of the CMD and less than 14 days' notice of them had been given to the Respondent, the application could not be amended by them (in terms of rule 14A of the HPC Rules) for the purposes of this CMD. However, that was not to say that they could not be relied upon should there be an adjournment or postponement of the case.
13. Mrs Breerton confirmed that the Notice to Leave and the second notice to leave (based on the intention to sell) had both been served by sheriff officers on the same date, namely 14 June 2023.
14. Mrs Breerton explained that she understood that the Respondent had been in receipt of universal credit in May 2023 but had not made any payment of rent that month. She noted that £478.98, which she understood to be paid to the Respondent as part of the universal credit, had been paid in June, August and September 2023 in respect of part of the monthly rent due (due at a rate of £550 per calendar month). She said that she had been told that the Respondent had been working in July 2023 and so it was possible that he did not receive universal credit that month but no payment of rent was made that month at all if he was working.
15. Mrs Breerton confirmed that the Respondent had been a tenant of the Property since September 2019 and had paid rent regularly until March 2023. She noted that the Respondent had had other people staying in the Property (which had not been authorised or permitted by the Applicants) and that she had been told that those people had been paying a "rent" to the Respondent but the Respondent had not paid any, or the full amount of, rent since March 2023.

16. Mrs Breerton noted that the trust had now gone as between the Applicants and the Respondent, after repeatedly being told that payment would be made but such payments not materialising.
17. Mrs Breerton explained that her husband was not in good health and that the issues with the tenancy of the Property were “too much” and also “taking their toll” on her too. She explained that this was why the Applicants had now decided to sell the Property.
18. Mrs Breerton confirmed that the Respondent did not have any dependants living with him and, based on what she had been told, his wife and child had returned to Poland a number of years ago.

FINDING IN FACT

19. The Tenancy Agreement stated that:

- a. The start date of the tenancy was 5 September 2019;
- b. Rent was payable in advance at a rate of £550 per calendar month;
- c. Payments of rent were due to be paid on or before the 5th of the month;
- d. No rent deposit was payable; and
- e. Notices to be served under the Tenancy Agreement were to be served using hard copy by personal delivery or recorded delivery.

20. The Tribunal was satisfied, on the balance of probabilities, that:

- a. as at the date of service of the Notice to Leave (14 June 2023), the Respondent had been in arrears for four consecutive months (amounting to £2,200);
- b. as at the date of submitting the application (17 July 2023), the Respondent had been in arrears for five consecutive months (taking the one payment that had been made into account, amounting to £2,271.02); and
- c. as at the date of the CMD, the Respondent was still in arrears for more than three consecutive months

REASON FOR DECISION

21. The Tribunal was satisfied, on the balance of probabilities, that:

- a. the Notice to Leave was valid and had been validly served;
- b. the pre-action requirements had been met;
- c. for three or more consecutive months the Respondent had been in arrears of rent;

- d. the delay in payment of the rent was not as a result of a delay or failure in the payment of a relevant benefit; and
- e. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. There had continuously been arrears (of some amount) since 5 March 2023, a period of over five consecutive months prior to the CMD.
 - ii. The Applicants had, more than once, offered to discuss a payment plan with the Respondent.
 - iii. The Respondent had confirmed in text messages that payments would be forthcoming but payment was not then made.
 - iv. It would not be in the interests of either party for the rent arrears to continue to increase.
 - v. There were no dependents living with the Respondent.
 - vi. Whilst the Property was not mortgaged and so the Respondent's failure to pay rent was not causing financial issues for the Applicants, it was having an impact on the health of both of them and Mrs Breerton needed to focus on supporting her husband with his health issues.

22. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that ground 12 (rent arrears) of schedule 3 to the 2016 Act applied.

DECISION

23. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P. Woodman

12 October 2023

Chair

Date