



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/23/2540

Re: Property at 110B Main Street, Lanark, ML11 7ES (“the Property”)

Parties:

Mr Alexander Allison and Mrs Hollie Allison, Ceann An Locha Croft, Whiteloch Road, Carnwath, ML11 8LR (“the Applicants”)

Mr Christopher Young, 110B Main Street, Lanark, ML11 7ES (“the Respondent”)

Tribunal Members:

Shirley Evans (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 an order against the Respondent for possession of the Property at 110B Main Street, Lanark, ML11 7ES under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 31 July 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 22 September 2022, a Notice to Leave with Sheriff Officer’s Execution of Service dated 14 June 2023, a rent statement, a letter dated 7 May 2023, an email dated 31 July 2023 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 17 August 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 23 September 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 19 October 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 6 November 2023. This paperwork was served on the Respondent by Dale Booth, Sheriff Officer, Edinburgh on 2 October 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 19 October 2023.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 6 November 2023 by way of teleconference. Mr McKeown from Jackson Boyd solicitors appeared on behalf of the Applicant. A trainee solicitor was in attendance as an observer. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 22 September 2022, a Notice to Leave with Sheriff Officer’s Execution of Service dated 14 June 2023, a rent statement, a letter dated 7 May 2023, an email dated 31 July 2023 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
8. Mr McKeown moved the Tribunal to grant an order of eviction. He advised that the Respondent had only paid the first months rent under the Private Residential Tenancy which started in September 2022. Rent was £500 per month. Nothing had been paid since then. Arrears had increased to £6500. He submitted that shortly after the tenancy started the Respondent had lost his job. The Applicants had tried to get the Respondent to engage and had

sent a pre action requirement letter to the Respondent. There had been no response to this letter. Accordingly, the Applicants served the Notice to Leave by Sheriff Officers on Grounds 12 (three months' rent arrears) and 12 A (substantial rent arrears).

9. Mr McKeown made submissions on reasonableness. He submitted the First Named Applicant was a self employed contractor who had some cattle. He had no steady income. He could only sell his cattle once a year. In order to secure a stable, monthly income the Applicants purchased three properties to rent, none of which have a mortgage. The Applicants rely on the rental income. They will use the properties for their pension funds. They have two children aged 11 years and 9 months. Mrs Allison is on maternity leave and works part time.
10. Mr McKeown submitted that as far as he was aware the Respondent lived alone. It is thought that the Respondent may have had weekend access to his young son. The most recent contact the Applicants had with the Respondent was about six weeks ago when the SSPCA removed two dogs from the Property. At that stage the Respondent told the Applicants that he would sell a horse and pay off the arrears. The dogs were then returned to the Property at which point there were complaints from the neighbours that the dogs were kept in the Property, were never allowed out and were defecating in the Property. The dogs were then permanently removed. Environmental Health attended and were looking to gain a warrant to enter the Property. The Applicants suspect the Respondent no longer resides at the Property and possibly lives with his girlfriend. The Applicants had contacted the benefits office to enquire whether they could get direct payments towards rent. However they were unable to ascertain whether the Respondent was in receipt of benefits.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
 - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (three months rent arrears) and Ground 12A (substantial rent arrears).

13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
14. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Grounds 12 and 12A of Schedule 3 is 28 days.
15. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Grounds 12 and 12 A of schedule 3 of the 2016 Act and states the amount of arrears and that the Respondent had only made one payment to account at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 16 July 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 14 June 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
16. Paragraph 5 (a) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act on 28 October 2022, including the introduction of Ground 12A. Ground 12A (Substantial rent arrears) provides –
 - "(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. Paragraph 1(1) and (2) of Schedule 2 of the 2022 Act introduced certain restrictions on residential evictions. Paragraph 1(5) provides that where an eviction order relates to a private residential tenancy under the 2016 Act the restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A.
18. The Tribunal considered the Respondent's poor payment history since September 2022 and that he had not paid anything since the start of the tenancy. Arrears have increased to £6500, being the equivalent of thirteen months rent. Ground 12A is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
19. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr McKeown. The Tribunal considered that the Respondent had not disputed the basis for the application. The Respondent was in substantial arrears of over six months. The arrears were continuing to increase. The Respondent has not paid anything towards the rent or arrears since the start of the tenancy in September 2022. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Campbell, that the factual basis of the application had been established. A case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council had been served.
20. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Mr McKeown that the Respondent had failed to engage with the Applicants. The Applicants' solicitor had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondent had not engaged at all with the Applicants other than promising to clear the arrears after the sale of a horse. There is a suspicion that the Respondent no longer lives in the Property and is possibly living with

his girlfriend. There are believed to be no outstanding benefits issues. The Applicants rely on the rental income for themselves and their two children. It would not be reasonable to expect the Applicants to continue to bear that level of substantial arrears with no engagement at all from the Respondent. The Respondent had not engaged with the Tribunal process. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The Tribunal considered the Respondent lived alone and had probably abandoned the Property having left two dogs unattended in the Property. The balance of reasonableness in this case weighted towards the Applicants.

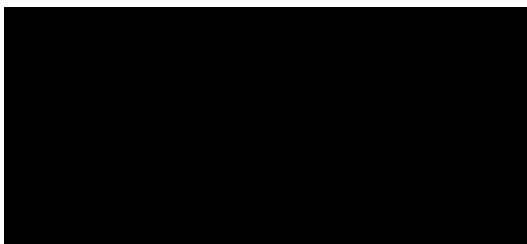
21. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent is in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

22. The Tribunal granted an order for repossession. 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.



Legal Chair

6 November 2023

Date