



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

Chamber Ref: FTS/HPC/EV/23/3032

Re: Property at 8 Tiree Road, Cumbernauld, G67 1NU (“the Property”)

Parties:

Parrington Property Ltd, 1 Cambuslang Court, Cambuslang, Glasgow, G32 8FH (“the Applicant”)

Miss Robyn McInnes, 8 Tiree Road, Cumbernauld, G67 1NU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 for an eviction order should be granted.

Background

- 1.** The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave, email to the Respondent with the Notice to leave, rent statement, correspondence with the Respondent and section 11 notice were lodged in support of the application.
- 2.** A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call at 10am on 30 November 2023 and that they were required to participate. Prior to the CMD the Applicant lodged an updated rent statement showing a balance due of £5653.61 on 3 November 2023.

3. The CMD took place on 30 November 2023. The Applicant was represented by their letting agent, Mr Turner. The Respondent did not participate.

The CMD

4. Mr Turner told the Tribunal that the Respondent is still in occupation of the property. The last contact with her was on 3 November 2023, when she notified the agency that she had made a payment of £250. Mr Turner stated that the Respondent previously lived at the property alone, but a friend has recently moved in. There are no children living there. To the best of his knowledge the Respondent is in employment, working in a nail salon. He is not aware of her being in receipt of benefits at any point during the tenancy and she has no health issues or disabilities to his knowledge. There has been very little contact from her recently. About six months ago, she made several promises to address the arrears and stated that these had been caused by changing job and a delay in being paid. No evidence was provided to support this.
5. Mr Turner advised the Tribunal that the Applicant is a limited company and owns one other property, also managed by his agency. The director of the company also owns other rental properties. The rent arrears have caused some financial stress. He understands that the Applicant intends to re-let the property. He confirmed that no further payments have been made to the rent account since the payment of £250 on 3 November 2023.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent is due to pay rent at the rate of £643.75 per month.
9. The Respondent has been in arrears of rent since 15 March 2022 and made no payments to the rent account between 26 June and 3 November 2023.
10. The Respondent currently owes the sum of £5653.61 in unpaid rent.
11. The Applicant served a Notice to leave on the Respondent on 12 May 2023.
12. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
13. The Respondent previously resided at the property alone. A friend currently resides at the property with her.
14. The Respondent is in employment.

Reasons for Decision

15. The application was submitted with a Notice to Leave dated 12 May 2023, together with a copy of an email which establishes that the Notice was sent to the Respondent on the same date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 12 June 2023.
16. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
17. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order."
18. Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
19. The Tribunal is satisfied that the Respondent currently owes the sum of £5653.61 and that she has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD.
20. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The application was accompanied by letters to the Respondent and the Scottish Government tenant information sheet, with copies of emails sending these documents to the Respondent in February and April

2023. These provided all the information required in terms of the protocol. The Respondent responded to one of the letters and made repayment proposals but did not adhere to these.

- (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information regarding her circumstances. The Applicant was only able to advise the Tribunal that the Respondent is understood to be in employment, having told the letting agent that she works in a nail salon. The Applicant lodged an email from the Respondent in response to one of the pre action protocol letters which states that she had checked and was not eligible for assistance with her rent.
- (c) The arrears are substantial and there were no payments made to the rent account for over 4 months between 26 June and 3 November 2023. The arrears are now the equivalent of over 8 months' rent.
- (d) The Respondent has not engaged with the Applicant for several months and has made no recent attempts to address the arrears or meet the current rent charge.

21. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 20, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

22. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

30 November 2023

J Bonnar

