



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/23/2726

Re: Property at 3 Bankpark Grange, Tranent, East Lothian, EH33 1ER (“the Property”)

Parties:

Stamford Hire Limited, 42 Oakleigh Park, South Whetstone, London, N20 9JN (“the Applicant”)

Alistair Ross, Alyson Tait, 3 Bankpark Grange, Tranent, East Lothian, EH33 1ER (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 27 November 2018.
2. The application was dated 8 August 2023 and lodged with the Tribunal on 9 August 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 6 April 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondents by email (in terms of the Tenancy Agreement) on that

date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £8,116.72 as of that date, detailed missed payments and referred to a rent statement and other correspondence between the parties regarding the arrears. The rent stated in the Tenancy Agreement lodged was £1,800 a month, meaning the arrears as at the date of the Notice to Leave exceeded 4.5 months of arrears. The Notice intimated that an application to the Tribunal would not be made before 2 July 2023.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Lothian Council on 9 August 2023 was provided with the application. There was evidence of the Applicant providing pre-action protocol information in standard form to the Respondents, such as by email of 3 March 2023 and in earlier correspondence.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 29 November 2023 at 10:00. We were addressed by Jacqueline McAinsh, Property Manager, Direct Lettings, on behalf of the Applicant. There was no appearance from the Respondents.
6. We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal. The Applicant’s agent said that communication with the Respondents was not good, though they had communicated at times in regard to rent arrears (all as detailed further below). The Applicants’ agent believed the Respondents remained at the Property.
7. We considered that the Respondents had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 10:15, we were satisfied to consider the application in the Respondents’ absence. In any case, no attempt was made by either of the Respondents (nor anyone on their behalf) to dial in late to the CMD.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was still insisted upon. Shortly prior to the CMD commencing, the Applicant’s agent informed the Tribunal Clerk that an updated statement of arrears had been sent in some days earlier but it was not in process. Arrangements were made for it to be resent and the statement, along with correspondence from a Universal Credit team, was reviewed by us during the CMD.
9. The Applicant’s agent explained that, from the outset of the Tenancy, the Respondents were understood not to be in employment and in receipt of Universal Credit. The UC was paid to the Respondents, and the Respondents in turn made payment of the rent to the Applicant’s agent. Three payments were then missed: one in November 2020 and two further in 2021 (March and May). The Applicant’s agent had no information as to the reason for the missed

payments. After further missing payments of July and August 2021, the Applicant's agent requested that UC made the payments direct to them and this commenced from October 2021. Two payments were then received monthly from UC, around the 17th of each month, being £1,695 towards current rent and a payment towards arrears (which varied from £60.80 up to £78.03 during 2023). Thus there were five missed payments creating core arrears of £9,000 and a shortfall each month in rent.

10. The Applicants' agent said that the Respondents had at times appeared to engage with payment of the arrears, but all proposals made (or put to the Respondents by the agent) were not adhered to. In all, only four payments from the Respondents against arrears (other than from UC) had been made, totalling £1,700. The last payment from the Respondents (other than from UC) was £200 on 30 August 2022, and the Respondents had never engaged with how they would address the monthly shortfall in rent. The £1,700 paid by the Respondents had reduced the core arrears but due to the monthly shortfall of £105, off-set by the smaller amount from UC towards arrears, the rate of increase in the arrears increased steadily since September 2022 until recently (a balance of £6,010.56 as at 26 September 2022 and £6,616.02 on 23 October 2023).
11. The arrears have now increased further as on 28 October 2023 the Applicant's agent had received an email from the Universal Credit team stating that the direct payments were stopping as "the claimant has reported a change in their circumstances". (The last payment from UC was on 23 October 2023.) No further explanation has been received for this, and the Respondents have not made contact to explain the reason. The Applicant's agent has requested the direct payments reinstated but this has been declined. The Applicant's agent believed that the Respondents were actively blocking the UC payments being paid over and were not also not making payments themselves from funds they were now personally receiving from UC. Arrears were now £10,324.02, being the equivalent of just over 5.5 months of rent arrears.
12. The Applicant's agent said that Property was not adapted for the needs of the Respondents nor any dependent. She did not believe that its location or nature possessed any specific suitability for the Respondents (such as proximity to a support network or agency). She understood the Respondents to reside at the Property with their five children. She was not aware of their exact ages but believed they ranged from 11 to 20, so accepted that at least one of the children would be in full-time education in a local school.
13. She described difficulties in the relationship with the Respondents, principally around poor communication from the Respondents, with requests for access routinely ignored or refused. She said that she had required to seek orders for access from the Tribunal, and also described an occasion when the Applicant had incurred a fee from a surveyor who was sent out to report on a rear wall, but was then unable to obtain access (despite the Respondents having been informed of the date of the inspection in advance). She referred to the Respondents breaching terms of the Tenancy Agreement by keeping four dogs

and four cats at the Property without consent, and painting internal walls also without consent.

14. In regard to the Applicant's circumstances, the Applicant had eight properties, but this and another were in rent arrears, leaving the company with financial issues given the continued (and increased) requirement of mortgage payments and continued maintenance obligations. The Applicant required to consider selling assets as soon as this was possible, and the Property may be the asset to be sold.
15. No motion was made for expenses.

Findings in Fact

16. On or about 27 November 2018 the Applicant let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on that day ("the Tenancy").
17. In terms of clause 8 of the Tenancy Agreement, the Respondents required to pay rent of £1,800 a month in advance on the 27th day of each month.
18. On 6 April 2023, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £8,116.72.
19. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 2 July 2023.
20. The Applicant's agent served a copy of the Notice to Leave on the Respondents by email on 6 April 2023.
21. Clause 4 of the Tenancy Agreement permits for service of notices by email to the Respondents at the email addresses provided by them.
22. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 9 August 2023.
23. As at the date of the Notice to Leave, rent arrears were in excess of 4.5 months.
24. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Lothian Council by the Applicant on 9 August 2023.
25. The Applicant provided the Respondents with pre-action protocol information by email on 28 December 2022 and 3 March 2023.

26. As of 29 November 2023, the Respondents remained in arrears of rent in the amount of £10,324.02 which is equivalent of over 5.5 months of rent.
27. The Respondents do not claim to have paid any amount of the arrears of £10,324.02 remaining as at 29 November 2023.
28. The sum of arrears remaining as of 29 November 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.
29. On 24 October 2023, the Tribunal intimated to the Respondents the date and time of the CMD of 29 November 2023 by Sheriff Officer.
30. The Respondents have five children, of which at least one is dependent upon them and in full-time education in a local school.
31. The Property is not specially adapted with the use of the Respondents.
32. The Applicant's business is financially affected by the Respondents' non-payment, and non-payment by other tenants, and as a result may require to realise assets so as to repay financial obligations.

Reasons for Decision

33. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents.
34. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - (3) *The First-tier Tribunal may find that the ground named by 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.*
 - (4) *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 Ministers in regulations.*

35. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondents' failure to pay is related to an issue with benefits other than – in part – that the Respondents have requested that the UC payments are no longer paid to the Applicant direct. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
36. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. The arrears are substantial and there is the absence of any engagement by the Respondents on payment of the arrears or the monthly shortfall. The Respondents did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us.
37. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12 subject to the appropriate suspension under the 2022 Act.

Decision

38. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that 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 them.

Joel Conn

29 November 2023

Legal Member/Chair

Date