



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 (Act)

Chamber Ref: FTS/HPC/EV/23/2482

Re: Property at 9 Main Street, Wishaw, ML2 7AF (“the Property”)

Parties:

Downing Street Properties Limited, 8 Thirsk Close, Chippenham, Wilts, SN14 0SJ (“the Applicant”)

Mr Sean Kerry, 9 Main Street, Wishaw, ML2 7AF (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted subject to the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 25 July 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 8 February 2023;
3. Notice to Leave served by Sheriff Officer on 12 June 2023;
4. Pre-Action Letters of 14 July 2023;
5. Section 11 Notice to Local Authority and email serving dated 25 July 2023;

6. Rent Arrears Statement at 8 July 2023;
7. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 26 October 2023;
8. Written Representations from Hamilton CAB.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 1 December 2023. The Applicants did not participate but were represented by their Solicitor. The Respondent participated and was not represented.

The Applicants' Representative confirmed that the amount of arrears had remained at £3,420.

The Respondent confirmed he was in arrears although he could not confirm the amount. He informed the Tribunal that he did not oppose the application as he could not afford the rent and he was actively seeking alternate accommodation. The Council had told him he needed to get an eviction order for them to progress his housing application.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 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.

The Tribunal then considered the documentary and oral evidence it had received from the Applicants and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 8 February 2023;
2. The monthly rent was £750;
3. Notice to Leave had been served on the Respondent on 12 June 2023;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
6. Section 11 notification had been served on the local authority;
7. The Respondent does not oppose the eviction order.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

The Tribunal considered the terms of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** which clearly applied to the application by virtue of the application being received after the commencement date of the Act.

The Tribunal granted the order with the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**.

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.

A Strain

1 December 2023

Legal Member/Chair

Date