



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/23/1033

Re: Property at 130 Summerpark Road, Dumfries, DG1 3FU (“the Property”)

Parties:

Dumfries and Galloway Homes Limited, Huntingdon, 27 Moffat Road, Dumfries, DG1 1NN (“the Applicants”)

Mr Robert Chambers, Mrs Paula Chambers, 130 Summerpark Road, Dumfries, DG1 3FU (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.

Background

By application, dated 28 March 2023, the Applicants sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12A of Schedule 3 to the Act, namely that the Respondent has substantial rent arrears.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 21 February 2019 at a monthly rent of £499.56, a Notice to Leave, dated 17 February 2023, confirming the rent arrears as £4528.36, advising of the Ground on which the Applicant was seeking an Eviction Order and that an application to the Tribunal for the Order would not be made before 20 March 2023, a Rent Statement showing arrears as at 3 March 2023 of £3,403.19, and emailed letters dated 14 December 2022 and 1 February 2023, from the Applicants to the Respondents, in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

The Applicants stated that from the time of an initial contact in March 2022, multiple repayment plans had been agreed. These had always been broken and there had been no response to the most recent contact made by the Applicants. Whilst there have been some payments made by the Applicants, the arrears remain significant and, in all the circumstances, it would be reasonable to issue an Eviction Order against the Respondents.

On 19 June 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondents were invited to make written representations by 10 July 2023. The Respondents did not make any written representations to the Tribunal.

First Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 31 July 2023. The Applicants were represented by Ms Kirstie Donnelly of TC Young LLP, solicitors, Glasgow. The Respondents were not present or represented.

The Applicant's representative told the Tribunal that a lump sum payment of £3,000 had been paid by the Respondents within the past week and that the arrears now stand at £1,202.51. The Respondents had offered to pay £100 per month towards the arrears, in addition to their normal rent, starting in September 2023. As, however, they had a habit of making payment arrangements, then not complying with them, then making a last-minute lump sum payment, Ms Donnelly was instructed to seek a continuation to a further CMD to be held shortly after 21 November 2023, so that the proposed payment arrangement could be monitored. The Tribunal was content to agree to such a continuation.

Second Case Management Discussion

A second Case Management Discussion was held by means of a telephone conference call on the morning of 27 November 2023. The Applicants were again represented by Ms Kirstie Donnelly of TC Young LLP, solicitors, Glasgow. The Respondents were not present or represented. Ms Donnelly told the Tribunal that she was disappointed to have to report that no payments had been received from the Respondents since the first Case Management Discussion and the arrears now stand at £3,364.79, in excess of 6 months. The Applicants had made extensive efforts to contact the Respondents, but it was not until last week that the Respondents engaged with them. The Respondents had accepted that there had been no further payments and told the Applicants that they had been in touch with a local Councillor regarding the process for being rehoused and that they had made an application for Housing Benefit (presumably Universal Credit). The Applicants understand that the Respondents have a 14-year-old child and that they run a family business in Dumfries. They appear to go on holiday abroad, but do not pay their rent. They had failed to comply with numerous payment arrangements, including their offer, in the week before the first Case Management Discussion, to pay down the arrears at £100 per month. Accordingly, Ms Donnelly submitted that it would be reasonable to issue an Eviction Order.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before sufficient information and documentation to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding 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 or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers and continued in force by Section 49 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022.

The Tribunal was satisfied that the rent was more than 6 months in arrears at the date of service of the Notice to Leave, that the Applicants had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, and that no evidence had been presented by the Respondents to indicate that the arrears of rent were wholly or partly a consequence of a delay or failure in payment of a relevant benefit. The Tribunal noted that the Respondents had failed to comply with previous payment plans and had paid nothing at all since the date of the first Case Management Discussion. They had not made any representations to the Tribunal in relation to their personal circumstances which the Tribunal might consider in deciding whether it would be reasonable to issue an Eviction Order and had chosen not to be present or represented at either Case Management Discussion.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order. The Tribunal was reluctant to allow the Order to be enforceable during the Christmas and New Year holiday period, when support services for the Respondents might be limited, so decided that it should not be enforceable before 5 January 2024.

The Tribunal's Decision 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.

George Clark

Legal Member/Chair _____

27 November 2023

Date