



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

Chamber Ref: FTS/HPC/EV/23/2268

Re: Property at 4 Finbracken, Sandbank, Dunoon, PA23 8PH (“the Property”)

Parties:

Mr Nick (or Nicholas) Hirst, Chvateruby 118, Kralupy nad Vltvou, 278 01, Czech Republic (“the Applicant”)

Mr Daniel Lynch, 4 Finbracken, Sandbank, Dunoon, PA23 8PH (“the Respondent”)

Tribunal Members:

James Bauld (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the application for the order for possession should be granted

Background

1. By application dated 6 July 2023, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 26 September 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 15 December 2023 and appropriate intimation of that hearing was given to all parties

3. The application was heard together with a conjoined application involving the same parties for a payment order under tribunal reference FTS/HPC/CV/232269

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 15 December 2023 via telephone case conference. The applicant was not personally present in the telephone case conference but was represented by his solicitor, Ms Molly Sommerville from Clarity Simplicity Limited, Solicitors, Glasgow. The Respondent did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant's solicitor with regard to the application.
7. She confirmed that she wished the order for eviction to be made.

Findings in Fact

8. The Applicant is the registered owner of the property .
9. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 21 May 2019. The tenancy was initially a joint tenancy involving the respondent and a Ms Samantha Stirling. The respondent became sole tenant on 20 January 2020 by way of assignation
10. The tenancy was a private residential tenancy in terms of the Act.
11. The agreed monthly rental was £350.
12. On 24 May 2023 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and Notice became effective on 24 June 2023. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
13. The notice was correctly drafted and gave appropriate periods of notice as required by law.
14. The notice set out various grounds contained within schedule 3 of the Act, including ground 12 (that the tenant had been in arrears of rent for three or more consecutive months) and ground 12A (that the tenant has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent due under the tenancy on the

date that the notice to leave is served on the tenants. Arrears at the date of service of the notice were £3,900

15. Arrears had accrued over the course of the tenancy and at the date of the lodging of the application arrears amounted to £4,600.0000.
16. The amount of arrears at the date of the CMD was £6,350.00.
17. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
18. The basis for the order for possession on both grounds 12 and 12A was thus established.

Reasons for Decision

19. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
20. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Over the course of the tenancy, the respondent has failed to pay the rent as it fell due and significant arrears have accrued. The last payment he made was on 31 October 2022.
21. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significantly in excess of six months' rent due under the terms of the tenancy. The tribunal accepted the unchallenged evidence of the applicant relating to the arrears. The tribunal accepted that the applicant had made appropriate attempts to encourage the respondent to deal with the arrears. The applicant has fully complied with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
22. The grounds for eviction based on rent arrears was accordingly established.
23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

24. The applicant's solicitor indicated that she also sought eviction on the basis of ground 12A. This would allow any eviction order granted to be enforced without it being affected by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which has introduced a moratorium on certain eviction orders.
25. An eviction order on this ground can only be granted if the Tribunal is also satisfied that it is reasonable to issue an eviction order on account of that fact
26. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

27. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
28. In this case the tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the landlord in this application
29. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. He has paid nothing towards the rent since October 2022, a period now in excess of a year. He is a single adult male with no known disabilities or other problems. He is believed to have been in full time employment when the tenancy commenced. He has no dependent children residing with him in the tenancy. He has made no proposal to deal with the arrears. He has provided no explanation for his failure to fully meet the rental obligations. The arrears as the date of the CMD amount to a period of unpaid rent which now exceeds eighteen complete months. He has lodged no written representations with the tribunal despite being offered the opportunity to do so.

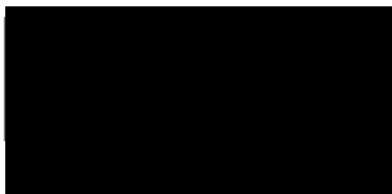
30. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

15 December 2023

Date