



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/3801

Re: Property at Gillburn Gate, Flat 2, Gillburn Road, Kilmacolm, PA13 4AG (“the Property”)

Parties:

Ms Hazel Reid, 61 Baidland Avenue, Dalry, Ayrshire, KA24 4DR (“the Applicant”)

Mr Haroon Khan, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application lodged on 26 October 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12A of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement showing the balance of rent arrears

owing at the time of the application being made of £3,850 and information regarding the 'pre-action requirements'.

2. Following initial procedure, on 17 November 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 15 December 2023, Sheriff Officers sought to serve a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion ("CMD") to take place by telephone conference call on 6 February 2024. However, said Sheriff Officer service was unsuccessful and service was thereafter effected by way of Advertisement on the Tribunal's website for the required period. Written representations were to be lodged by 1 January 2024. No written representations were submitted by the Respondent.
4. On 19 January 2024, the Applicant's representative emailed the Tribunal attaching a copy of an updated rent statement, showing an increased balance owing of £5,500.

Case Management Discussion

5. At the CMD on 6 February 2024 at 10am, the Applicant was represented by Ms Cyndi McKay of Kilgen Property Management, the Applicant's letting agents. Ms McKay was accompanied by Ms Sydney Smade, also of Kilgen Property Management who was attending as observer only. The commencement of the CMD was delayed for approximately 5 minutes to see if the Respondent would join the call but he did not.
6. After introductions and introductory remarks by the Legal Member, Ms McKay was asked about the ground of eviction being relied on here, given that the application mentions Ground 12A (substantial rent arrears), whereas the Notice to Leave mentions only mentions Grounds 11(breach of a tenancy condition other than rent) and 12 (rent arrears over 3 consecutive months). Ms McKay explained that they thought they were better raising the eviction under the new ground available, Ground 12A, given that the Respondent did have rent arrears amounting to 6 months' rent. The Legal Member explained that, in terms of the legislation, the Tribunal can generally only consider an eviction ground which was intimated to the tenant in the Notice to Leave. It was noted that, in that case, the Applicant was requesting to amend the application to proceed only under Ground 12. The Legal Member confirmed that the application could proceed on that basis and explained the effect of this on the timescale for implementation of any order granted, in terms of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA").
7. Ms McKay then summarised the background to the application and confirmed that the Applicant still wishes to seek an eviction order as they have not been able to establish if the Respondent has definitely vacated the Property, although they had been advised by the Tribunal of the terms of the Sheriff

Officer's report, namely that they considered that he had vacated when they tried to serve the papers in December 2023. Ms McKay confirmed that the Respondent had paid 3 months' rent in advance plus the deposit at the commencement of the tenancy on 16 December 2022. The rent was £550 per month. The Respondent made one further payment towards rent on 16 March 2023, but has not paid anything since then. They were instructed to serve a Notice to Leave, in terms of which the Respondent was asked to vacate by 23 October 2023. They visited the Property on that date as they had heard nothing from him and found the curtains drawn. They looked through the letterbox and could see that his belongings were still there. They have not been back to the Property since and have not heard anything from the Respondent. They were last inside the Property in June 2023, when safety checks were being carried out by a contractor. The Respondent had given permission for this, provided the letting agent accompanied the contractor, but was not present himself. They issued several letters to the Respondent regarding the rent arrears and he occasionally communicated with them by telephone in response, but never in writing. Initially, he offered explanations such as that the arrears were down to a marital breakdown and that his bank cards had been frozen. He told them he worked as a long-distance lorry driver and that it was difficult for him to contact them or arrange to make rent payments during business hours. The payments he had originally made were made by BACS or by telephone. He promised at one point to pay a lump sum payment towards the arrears by a date in June 2023 but failed to do so. The Respondent was understood to live alone at the Property, which is a one-bedroom flat and to be around 44 years old. He had never mentioned any health conditions to the letting agent or being in receipt, or having applied for, any state benefits.

8. As to the Applicant's circumstances, Ms McKay stated that this is the only property they manage for her and that they are not aware of the Applicant having any other properties that she lets out. She is having to pay factors' fees and meet other outgoings in relation to the Property which she is not receiving any rental income to cover. She has not received any rent for over 10 months and the rent arrears are now very high. Ms McKay stated that the Applicant has been nothing but patient in relation to this matter and did not rush to evict the Respondent when he began to accrue rent arrears. She was also willing to enter into a payment arrangement with the Respondent. It is thought that the Applicant may seek to let the Property out again once she recovers it but she is understandably nervous in case the same thing happens again.
9. The Tribunal adjourned briefly to consider the application in private and, on re-convening, confirmed that the eviction order would be granted. There was brief discussion regarding the process to follow and Ms McKay was thanked for her attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 16 December 2022.
3. The rent in terms of the PRT is £550 per calendar month.
4. The Respondent initially paid rent due but has not made any payments towards rent since the sum of £550 was made on 16 March 2023.
5. The rent account has been continuously in arrears since April 2023.
6. Rent arrears amounted to £3,300 when Notice to Leave was served, £3,850 when this application was made, and now amount to £5,500.
7. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was sent to the Respondent by email on 22 September 2023.
8. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 23 October 2023.
9. The Tribunal Application was submitted on 26 October 2023.
10. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
11. It is not known if the Respondent is still occupying the Property.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD on behalf of the Applicant.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) as follows:-

“Rent arrears

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

(2)

(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.*

(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.*

(6) *Regulations under sub-paragraph (4)(b) may make provision about—*

(a) *information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*

(b) *steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

(c) *such other matters as the Scottish Ministers consider appropriate.”*

The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, as outlined above, to grant the eviction order sought. The rent account had been in arrears for a significant period of time (continuously from April 2023) and amount to a significant sum (£5,500) which the Tribunal was satisfied was having a negative impact on the Applicant's finances, given that she had ongoing outgoings to pay in respect of the Property. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent and resolve the arrears situation with him. Although, the Respondent initially engaged occasionally with the Applicant's letting agent by telephone, and offered an explanation for the rent arrears, he has not engaged for some time. He has failed to adhere to a previous payment plan. He has not submitted any written representations to the Tribunal, nor attended the CMD of which she had been properly and timeously notified by Advertisement for the requisite period on the Tribunal's website. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N Weir

Legal Member/Chair

6 February 2024
Date