



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/23/3186

Re: Property at 4 Castle Court, Menstrie, FK11 7AH (“the Property”)

Parties:

Mrs Isobel/Anita Dermidy-Muirhead, Cherrywood, Keir Street, Dunblane, FK15 9BP (“the Applicant”)

Mr Ian Ryan, 4 Castle Court, Menstrie, FK11 7AH (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

1. On 8th September 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property using Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 28th March 2019 and a rent of £500 per month
 - ii. Copy Notice to Leave dated 7th August 2023;
 - iii. Copy email dated 7th August 2023 to the Respondent serving the Notice to Leave;

- iv. Section 11 Notice and proof of service thereof;
 - v. Rent Statement
3. The Application was served on the Respondent by Sheriff Officers on 21st November 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Cullens of Jardine Donaldson, Solicitors. There was no attendance by the Respondent or any representative on his behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Mr Cullens sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He said that the current arrears outstanding were £19,900. At the date the Notice to leave was served, 7th August 2023, the arrears were £17,400. He said that the ground was met as the rent was £500 per month and the arrears amounted to more than six months’ payments.
7. The Tribunal were satisfied that the ground had been established and asked Mr Cullens to address the Tribunal on reasonableness.
8. Mr Cullens said that the arrears had begun to accumulate prior to the pandemic. The Applicants had afforded the respondent some leeway, but had then served a Notice to Leave. The Respondent got in touch and made some payments. These payments did not continue. On several occasions the Respondent said he would vacate, but he did not.
9. Mr Cullens said that he was unaware if the Respondent had ever applied for benefits. He lived alone at the property. He frequently did not engage with attempts at communication. The Applicants had tried to contact him on many occasions about the arrears. Pre action protocol letters had been sent when Jardine Donaldson were instructed by the Applicants.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 28th March 2019;
- c. The rent was £500 per month;
- d. A Notice To Leave, dated 7th August 2023, was served timeously and correctly;

- e. The arrears at the time of serving the notice were £17,400, which is in excess of six months' rental payments;
- f. The Application was served on the Respondent by Sheriff Officer on 21st November 2023;
- g. The Respondent is currently in rent arrears in the amount of £19,900;
- h. The Respondent lives alone;
- i. The Respondent does not appear to have applied for benefits;
- j. The Applicants attempted to contact the Respondent on numerous occasions about the arrears;
- k. The Respondent received a pre action protocol letter.

Reason For Decision

10. Ground 12A of the Private Housing (Tenancies)(Scotland) Act 2016 states as follows:

It is an eviction ground that the tenant has substantial rent arrears.

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

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) 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), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant 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,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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,

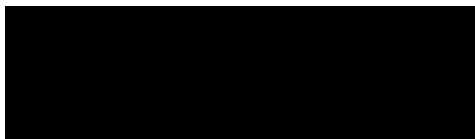
(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

11. The Tribunal was satisfied that the Ground had been met given the level of the arrears. The Tribunal also had to decide if it was reasonable to grant the eviction order.

12. The Tribunal were of the view in this case that the level of the arrears and the lack of contact made by the respondent made it reasonable to grant the order.

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.



Legal Member/Chair

15th January 2024

Date