



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/23/3581

Re: Property at 46 Underwood Lane, Paisley, PA1 2SL (“the Property”)

Parties:

Badesha Properties Limited, 10 Well Street, Paisley, PA1 2SP (“the Applicant”)

Miss Aimee McLean, 46 Underwood Lane, Paisley, PA1 2SL (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent with enforcement suspended for a period of two months.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 19 November 2020 which commenced on that same date;
 - (ii) Notice to Leave dated 22 August 2023 stating that proceedings for possession will commence no earlier than 22 September 2023 and citing grounds 12 and 12A, together with proof of service on the Respondent by email of same date;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Renfrewshire Council together with proof of delivery by email dated 10 October 2023; and
 - (iv) Rent Statement.
- 2 By Notice of Acceptance of Application dated 31 October 2023 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
 - 3 The Applicant subsequently submitted an updated rent statement to the Tribunal by email dated 24 January 2024 confirming arrears of £4955 as at 19 January 2024.

Case Management Discussion

- 4 The Applicant was represented at the Case Management Discussion by Mr Ian Troy of Pennylane Homes. The Respondent was present and accompanied by her mother as a supporter. The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.
- 5 The Tribunal explained the legal test for grounds 12 and 12A and asked parties to address the Tribunal on their respective positions regarding the matter.
- 6 Mr Troy advised that the Applicant sought an eviction order. The arrears had increased to £4995 with no payments having been made since 16th October 2023. There had been no payment proposals from the Respondent since that date. Mr Troy confirmed that payment plans had previously been entered into with the Respondent but she had failed to adhere to them. The arrears were now in excess of six months rent. Mr Troy confirmed that he would, on behalf of the Applicant, send weekly reminders to the Respondent regarding the arrears. She had been advised to apply for benefits and had been pointed in the direction of advice agencies, for example Shelter Scotland. Mr Troy advised that there had also been less formal correspondence with the Respondent regarding the arrears.
- 7 Ms McLean advised that she had tried to enter into a payment plan that was affordable. She had been chasing up the Applicant's agent in this regard as well as liaising directly with the Applicant. It had been confusing. The Applicant had stated that it was up to their agent to make a decision and it

was outwith their control. Ms McLean didn't know who was going to decide what would be acceptable in terms of a payment plan. She had tried to avoid eviction by offering what she could. She had originally considered paying £200 per week towards the arrears, however reduced this to £150 per week which was initially affordable. Her shifts were then reduced at work and she had switched from weekly to monthly pay, which meant she was no longer able to meet the payments. She didn't think it was possible to make another arrangement on the basis that her circumstances had changed. She had already received an email from the Applicant's agent advising that the application had been made to the Tribunal. Ms McLean advised that she found Mr Troy difficult to deal with and felt he was obnoxious. She had experienced good relationships with other staff in the agency and had asked to speak to Mr Troy's manager but instead had been given the names of two Directors of the company. She felt she had been challenged when trying to seek assistance. She had explained her difficulties to the Applicant directly.

- 8 Ms McLean explained that her mental health had suffered as a consequence of the situation and everything had been piling up. In response to questions from the Tribunal she confirmed that she had received the Notice to Leave in August 2023, but on the basis that a payment plan had been agreed after it was sent she understood that it was no longer valid following advice from the Citizens Advice Bureau.
- 9 Ms McLean accepted that the arrears now stood at £4995 and that no payments had been made since October 2023. She confirmed that she was on a zero hours contract working front of house at a restaurant. Sometimes she would only receive one shift a week. In response to questions from the Tribunal she advised that her weekly pay was around £250 but she was hoping to find another job. On top of that she was receiving universal credit with a housing element which amounted to £300 per month. She had been in receipt of universal credit for around 6 months and conceded that she had not paid the housing element to the Applicant as a matter of course. Ms McLean confirmed that she resided alone in the property.
- 10 Mr Troy confirmed that emails had been sent to Ms McLean throughout the tenancy. Mr Troy had sent an email in October 2023 to advise that the payment plan had not been adhered to and therefore an application would be made to the Tribunal. Ms McLean had responded to advise that the payment plan would resume on 6 November but there had been no payments and no further contact. Emails had been sent to Ms McLean on 14th November, 28th November and 1st December asking her to reach out but she had not responded. Mr Troy confirmed that he had spoken to Ms McLean prior to Christmas and she had said she was not making any further payments in light of the application to the Tribunal. Mr Troy had tried to explain that she still had an obligation to pay rent until the tenancy came to an end. However Ms McLean was not accepting what he was saying and asked to speak to his manager. He had therefore provided her with the names of the Directors who were his direct line managers. He was not aware of Ms McLean having made contact with them. Ms McLean confirmed this was the case.

- 11 Ms McLean went on to state that she was receiving support from her mother given her mental health and her mother was helping her with her finances to help balance things. She did want to remain in the tenancy despite her concerns with the Applicant's agent. She would be willing to pay an additional £200 per month towards the rent arrears on top of the monthly rent. Ms McLean advised that she had received advice from the Council not to pay rent on the basis that an application had been made to the Tribunal. She went on to give examples of things that had been unsatisfactory with the tenancy, including one occasion where she returned home and the door to the property was wide open, allowing her cat to escape. The Applicant's agent didn't know who had accessed the property. The property was infested with cockroaches and there were rats in the bin area, along with a smell of marijuana in the communal close. The Tribunal asked if Ms McLean had mentioned these issues to the Council and the CAB. She confirmed that she had. The Tribunal asked if Ms McLean had been given advice about action she could take as a result but she stated that neither had told her that she could take action against the Applicant.
- 12 Mr Troy advised that he did not think the offer from Ms McLean was sustainable. There had been similar offers of payment in the past which had not been met. Mr Troy was not aware that Ms McLean was in receipt of universal credit. If she wanted to resolve matters she would have paid over funds, but nothing had been paid. The mention of a strained relationship between himself and Ms McLean did not absolve her of the obligation to pay rent. In light of the history of the tenancy the Applicant would not be willing to enter into any further payment plans. It had been attempted on several occasions but never worked out. In response to questions from the Tribunal Mr Troy advised that he managed four or five properties for the Applicant.

Relevant Legislation

- 13 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(1) *The First-tier 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.*

(2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

(3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

(4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

52 Applications for eviction orders and consideration of them

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,
(iii) six months after it begins if neither subsection (3) nor (3A) applies.
(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,
(ii) three months after it begins if subsection (3C) applies,
(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]
(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and
(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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

(3) The First-tier Tribunal may find that the ground named by subparagraph (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.

Schedule 3, Part 12A

(1) 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.

- 14 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application, as is the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Findings in Fact and Law

- 15 The parties entered into a Private Residential Tenancy Agreement dated 19 November 2020.
- 16 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 17 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £450 per calendar month.
- 18 On 22 August 2023 the Applicant delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited grounds 12 and 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 22 September 2023.
- 19 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 20 As at the date of service of the Notice to Leave arrears in the sum of £3675 were outstanding.
- 21 As at the date of the Case Management Discussion arrears in the sum of £4955 were outstanding.
- 22 The last payment made by the Respondent to the rent account was in October 2023.

- 23 The arrears are not as a result of the failure or delay in payment of a relevant benefit. The Respondent has been in receipt of universal credit, including a housing element of £300 per month, for approximately six months.
- 24 The Respondent has entered into payment plans with the Applicant which have not been adhered to.
- 25 The Respondent resides alone. The Respondent is in employment and receives approximately £250 per week in wages.

Reasons for Decision

- 26 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no issues identified by the Tribunal to be resolved that would require a hearing to be fixed. Both parties had been given the opportunity to make lengthy submissions at the Case Management Discussion.
- 27 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.
- 28 The Tribunal was satisfied based on its findings in fact that at least six months arrears had accrued and were outstanding as at the date of the service of the Notice to Leave and the date of the Case Management Discussion. The Tribunal therefore had to consider whether it was reasonable to make the order, taking into account the particular facts and circumstances of this case.
- 29 The Tribunal took into account the fact that the Applicant had been willing to enter into payment plans with the Respondent, and that these had not been adhered to. The Tribunal further took into account the fact that the Respondent had been in employment as well as receiving universal credit with a housing element which she had not paid over to the Applicant. Whilst the Respondent had stated she was on a zero hours contract she had been receiving as a minimum level of income from universal credit which included a payment allocated to her rent. However she had chosen not to make payment of this sum to the Applicant, which would have mitigated her increasing arrears. There was no credible explanation from the Respondent as to why she had acted in this way. The Tribunal also took into account the fact that the Respondent had no dependents and resided in the property alone. Whilst the Tribunal did have cognisance of the Respondent's reference to her mental

health, ultimately the arrears had now reached an unsustainable level and given the history of the tenancy the Tribunal did not believe the Respondent would be in a position to maintain the tenancy in the circumstances.

30 Accordingly having weighed up the relevant factors in this case in the assessment of reasonableness the Tribunal ultimately determined that it would be reasonable to make an eviction order.

31 The decision of the Tribunal 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.

Ruth O'Hare

30 January 2024

Legal Member/Chair

Date