



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/23/3827

Re: Property at Flat 1/1, 28 Fereneze Drive, Paisley, PA2 8PJ (“the Property”)

Parties:

Mr David Lang, 34 Riccartbar Avenue, Paisley, PA2 6BG (“the Applicant”)

Mr Peter Costello, Flat 1/1, 28 Fereneze Drive, Paisley, PA2 8PJ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Frances Wood (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.

Background

1. On 27th October 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 under Ground 12 and 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 15th June 2018 and a rent of £620 per month;
 - ii. Copy Notice to Leave dated 5th September 2023;
 - iii. Copy email dated 5th September 2023 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;
 - v. Rent Statement
 - vi. Three pre action requirement letters in terms of the Pre Action Protocol

3. The Application was served on the Respondent by Sheriff Officers on 7th February 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. 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 Lang sought an order for eviction in terms of grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. Mr Lang said that the tenancy began on 15th June 2018. There had been difficulty throughout with rent arrears. At the time the Notice to leave was served the arrears were £5680, at the time when the application was lodged the arrears were £6339, and as at today’s date the arrears were £9634.
7. Mr Lang said that he had no information about the Respondent being entitled to any benefits or of him having made any application for benefits. He understood that the Respondent was a fencing contractor, and in employment. He often saw works vans parked outside the property. Mr Lang said that he had not had any contact with the Respondent since May 2023 and there had been only one payment of rent since September 2022. He believed that the Respondent had lived at the property with his wife and two children at the start of the tenancy, but he did not know who lived there now.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 15th June 2018;
- c. The monthly rent is currently £659;
- d. The applicant sent three letters to the Respondent to comply with the Pre Action Protocol;
- e. A Notice To Leave, dated 5th September 2023, was served timeously and correctly;
- f. A section 11 notice was served on the local authority;

- g. The Application was served on the Respondent by Sheriff Officer on 7th February 2024;
- h. Arrears at the date of serving the Notice to Leave were £5680;
- i. Arrears at the date the application was lodged were £6359;
- j. Current arrears are £9634;
- k. At the time the Notice to leave was served the Respondent was more than six months in arrears
- l. The Respondent's arrears are not caused as a result of non payment of a benefit.

Reasons for Decision

8. Ground 12 of Schedule 3 to the 2016 Act is as follows:

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 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.

Ground 12A is as follows:

- 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.

9. The Tribunal are satisfied that both grounds have been met due to provision of the Notice to Leave, the rent statement, and the Pre Action Protocol letters. The Tribunal is also satisfied that the level of rent arrears, being well in excess of six months' payments, means that it is 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.

21st March 2024

Legal Member/Chair

Date

