



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/4387

Re: Property at Flat 4, 141 Marina Road, Bathgate, EH48 1RS (“the Property”)

Parties:

Mrs Janice Hughes, 125 Main Street, Winchburgh, Broxburn, EH52 6QP (“the Applicant”)

Mr Marc Boyle, Flat 4, 141 Marina Road, Bathgate, EH48 1RS (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application for an eviction order made on 8th December 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), and under ground 12A of Schedule 3 of the Act. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties, which commenced on 9th October 2020 with a monthly rent of £675, a rent statement, section 11 notice with evidence of service, copy notice to leave with evidence of service, rent increase notice with evidence of service, and pre-action requirement correspondence.
2. Notification of the application and the forthcoming Case Management Discussion upon the Respondent was carried out by Sheriff Officers on 26th February 2024.
3. An updated rent statement showing arrears in the sum of £7955 was lodged by the Applicant representative on 21st March 2024.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 4th April 2024. Ms Alexandra Wooley, Solicitor, was in attendance on behalf of the Applicant. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Ms Wooley said there had been no recent correspondence from, or contact with, the Respondent, although the letting agent had been in touch with the Respondent’s father this week to arrange an inspection. The Respondent’s father is usually the point of contact.
7. Ms Wooley moved the Tribunal to grant an eviction order under ground 12A as the Respondent had more than six months’ rent outstanding at the time of service of the notice to leave. The arrears are now £7955. No rental payments have been made since April 2023. Pre-action correspondence was sent to the Respondent in June 2023. He has not engaged meaningfully.
8. Responding to questions from the Tribunal, Ms Wooley said the Applicant does not let any other properties. There is no mortgage on the Property; however, the arrears are impacting upon the Applicant’s finances.
9. Responding to questions from the Tribunal regarding the circumstances of the Respondent, Ms Wooley said the Respondent lives alone and is unemployed following an accident that left him unable to work. Asked whether this had led to the rent arrears, Ms Wooley said this was the reason the Respondent had given for the rent arrears. Ms Wooley was unaware of any benefits being paid to the Respondent, and the Applicant has not received any housing benefit payments direct. Ms Wooley submitted that, even if it was considered that the accident had occurred at the same time as the commencement of the rent arrears, the Respondent had a year in which to sort out benefits, and he had not done so.
10. Responding to questions from the Tribunal, Ms Wooley said she was unaware of whether the Respondent was in receipt of statutory sick pay, or whether he had been in touch with the local authority about housing. Ms Wooley said the local authority are aware of the situation, as a section 11 notice has been served upon them. Ms Wooley submitted that the local authority will be obliged to provide the Respondent with emergency accommodation.

Findings in Fact and Law

11.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 9th October 2020 with a monthly rent of £675.
 - (ii) The rent was increased to £695 from 9th July 2023 by rent increase notice dated 1st April 2023.
 - (iii) The Applicant has served a notice to leave upon the Respondent.
 - (iv) The Respondent has accrued rent arrears.
 - (v) The Respondent had substantial rent arrears which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the notice to leave.
 - (vi) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
 - (vii) The Applicant has complied with the pre-action protocol.
 - (viii) It is reasonable to grant an eviction order.

Reasons for Decision

12. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact.
13. The Respondent had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit. The Tribunal is satisfied that Ground 12A has been established.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Respondent has been a tenant since October 2020 and appears to have paid his rent each month until May 2023. The Tribunal took into account that the Respondent had claimed to have had an accident that affected his ability to work, and that this may have affected his ability to pay rent. The Tribunal took into account that a considerable time has passed in which the Respondent has failed to engage with the Applicant in respect of the rent arrears. The Respondent

does not appear to have attempted to enter into a payment plan to repay the arrears, despite the Applicant having complied with the pre-action protocol and having made the Respondent aware of sources of advice. The Respondent did not attend the CMD to put forward any argument in respect of reasonableness.

15. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The sum outstanding is significant. Given the passage of time and the lack of engagement, there appears to be no real prospect of the Respondent paying their ongoing rent or addressing the arrears. The Applicant has complied with the pre-action protocol. The failure to pay rent is impacting upon the Applicant's finances.

16. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

17. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 7th May 2024.

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

Date 4th April 2024