



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

Chamber Ref: FTS/HPC/EV/23/3120

Property at 368H 3/R Strathmore Avenue, Dundee, DD3 6RU (“the Property”)

Parties:

TWL Properties Ltd, 22 Angus Gardens, Monifieth, Angus, DD5 4UE (“the Applicant”)

Mr James Peck, 368H 3/R Strathmore Avenue, Dundee, Angus, DD3 6RU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 and grounds 12 and 12A of Schedule 3 of the 2016 Act. A tenancy agreement, rent statement, Notice to Leave and section 11 Notice were lodged with the application.**
- 2. The application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 15 January 2024 at 2pm. The CMD took place on this date. The Applicant was represented by Mr Dymock. The Respondent participated.**

Summary of Discussion at CMD on 15 January 2024

3. The Tribunal noted that the Applicant had not lodged an updated rent statement prior to the CMD. Mr Dymock told the Tribunal that there had been 2 payments from Universal Credit since the application was lodged - £365 on 13 December 2023 and 12 January 2024. The total sum currently owed was £3020. He also confirmed that the Applicant wished ground 12A to be considered as well as ground 12 as the arrears exceed 6 months' rent.
4. Mr Peck told the Tribunal that he sold his flat in Birmingham in 2020 and when he first rented the property, he used the proceeds of the sale to pay the rent. When he ran out of money, he found a job at the slaughterhouse in Perth in July 2023, but he lost this job in October/November and now receives universal credit. He had not contacted the Local Authority or obtained advice about his housing situation. He stated that wanted to repay the arrears but might not be able to do so until he gets a job. He would like to continue to live at the property. He admitted the arrears were owed. In response to questions from the Tribunal, Mr Peck said that he had no health issues or disabilities but that he had difficulty dealing with paperwork. He lived alone and had no dependants. He said that he asked Universal Credit to pay additional sums to the rent account, but they said that they could only pay the sum specified in the tenancy. He was looking for work and was re-training in the meantime.
5. Mr Dymock told the Tribunal that the Applicant is a limited company, but the sole directors are Mr and Mrs Leather. The company has a portfolio of 12 properties, some in the same building as the property. There is a portfolio mortgage over the properties. The directors have a large family, and the rental income does not generate enough for the family to live on so Mr Leather also has a job. The directors depend on the rental income to supplement the family income. The arrears of over £3000 have had an adverse financial impact. Mr Dymock said that there has been some correspondence from the Respondent in relation to repayment of the arrears, but no payments have been received.
6. Following an adjournment, the Tribunal determined that the CMD would be continued to a further teleconference CMD to allow the Respondent to obtain advice in relation to the eviction application, his housing options, and his finances and to establish if he is able to make any repayment proposals regarding the arrears. The Tribunal issued a direction to the parties. The Tribunal also determined that ground 12A will be considered as well as ground 12, in terms of Section 52(5)(b) of the 2016 Act.
7. The parties were notified that a further CMD would take place by telephone conference call on 2 May 2024 at 10am. Prior to the CMD, the Applicant lodged an updated rent statement. The Respondent did not respond to the direction.
8. The CMD took place on 2 May 2024. The Applicant was again represented by Mr Dymock. The Respondent did not participate and was not represented.

CMD on 2 May 2024

9. Mr Dymock told the Tribunal that the Respondent is still residing at the property. There has been limited contact with him. He did not respond to an email, sent after the CMD. Mr Dymock also phoned him about a month ago. Mr Peck said that he would be moving out. However, he has been seen coming and going and a neighbour has complained about a smell from the property. The direct Universal Credit rent payments are still being received.
10. The Tribunal referred Mr Dymock to the rent statement lodged on 10 April 2024. This shows a balance of £3415 outstanding with payments of £365 being received every month. Mr Dymock stated that these are being made from UC but that no additional payments are being made by the Respondent and there is a £10 shortfall each month that is not being met. Since the statement was lodged a further payment of £365 was received on 13 April and a rent payment of £375 has become due on 1 May. The total now owed is £3425.
11. Mr Dymock told the Tribunal that he has no information about the Respondent's current circumstances. He stated that he believes that he is 30/35 years of age. There are concerns about the condition of the property. This is based on the report from the neighbour and Mr Dymock's observations when the gas safety check was carried out at the end of 2023. The property was dirty and untidy. There were piles of rubbish in the property. The Applicant intends to carry out work at the property before it can be re-let. This might include a new kitchen and bathroom, due to the neglect and damage by the Respondent. The Applicant's circumstances are as outlined at the previous CMD.

Findings in Fact

12. The Applicant is the owner and landlord of the property.
13. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
14. The Respondent is due to pay rent at the rate of £375 per month.
15. The Respondent has been in arrears of rent since 1 April 2023.
16. Most of the Respondent's rent is being met by Universal Credit payments which started on 13 December 2023.
17. There is a shortfall of £10 per month between the rent charge and the UC payments.
18. The Respondent has made no payments to reduce the arrears.

19. The Respondent currently owes the sum of £3425 in unpaid rent.
20. The Applicant served a Notice to leave on the Respondent on 2 August 2023.
21. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
22. The Respondent resides at the property alone.
23. The condition of the property is poor as a result of neglect by the Respondent.

Reasons for Decision

24. The application was submitted with a Notice to Leave dated 2 August 2023, together with a copy of an email which establishes that the Notice was sent to the Respondent on the same date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 2 September 2023.
25. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
26. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
27. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(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 in 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."
28. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the

arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.

29. Ground 12A of schedule 3 (added by the Cost of Living (Tenant Protection) (Scotland) Act 2022) states, "(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 (3) the Tribunal is satisfied that it is reasonable to issue an eviction order.

30. From the documents submitted and the information provided at the CMDs, the Tribunal is satisfied that the Respondent currently owes the sum of £3425 and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Ground 12 is therefore established.

31. From the documents submitted the Tribunal is not persuaded that ground 12A is established. At the date of service of the Notice to leave (on 2 August 2023) the arrears were £1875. This is the equivalent of 5 months of arrears. The Applicant has therefore not complied with Ground 12A(b)

32. The Tribunal proceeded to consider whether it would be reasonable to grant the order on ground 12 and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted a copy letter to the Respondent which provided the information required in terms of the protocol.

 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. At the first CMD the Respondent told the Tribunal that he initially paid his rent from his savings. When he had used up his savings, he found a job but lost it in October 2023. The arrears had already reached £2625 by that point. He made a claim for benefit which has been in payment since December 2023.

 - (c) The arrears are substantial. Since December 2023, most of the rent charge is being met by universal credit, but the Respondent has made no payments to the arrears or the shortfall. He has not engaged with the Applicant or made a repayment proposal.

 - (d) The Respondent lives alone at the property.

 - (e) The condition of the property has deteriorated because of the Respondent's neglect.

33. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 32, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

34. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

2 May 2024

