



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

Chamber Ref: FTS/HPC/EV/23/4572

Re: Property at 15 Kinnaird Street, Dundee, DD3 6NX (“the Property”)

Parties:

Mr Wojciech Polkowski, 206 Strathay Road, Perth, PH1 2ND (“the Applicant”)

Mr Kieran Gray, 15 Kinnaird Street, Dundee, DD3 6NX (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gordon Laurie (Ordinary Member) (“the tribunal”)

Decision

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

Background

1. This is an application for recovery of the Property. The application is dated 18 December 2023 and was accepted for determination on 19 January 2024. Subsequent to this a further application form was submitted which was dated 31 January 2024 and Ms Ramzan, the Applicant’s representative, confirmed that the purpose of this was to amend the sum stated as rent arrears from £5900 in the earlier application form to £5760. She stated that the later form was not to be considered a separate application.
2. The Applicant is seeking recovery under Ground 12, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that a tenant has been in rent arrears for three or more consecutive months.

3. A case management discussion was held by teleconference on 17 April 2024. Ms Aneysa Ramzan, trainee solicitor, represented the Applicant who was also in attendance. There was no appearance by the Respondent and the tribunal had sight of a Sheriff Officer's Certificate of Intimation confirming that notice of the case management discussion had been served on the Respondent on 11 March 2024.
4. The legal member outlined the purpose of a case management discussion.
5. No written representations had been submitted by the Respondent.
6. The Applicant's representative had submitted an updated rent statement on 3 April 2024.

Preliminary Matters

7. Ms Ramzan referred the tribunal to the rent statement which had been submitted on 3 April 2024 and which showed the level of rent arrears at 28 March 2024 to have been £7920. She said that the Respondent had made only two payments of rent since the commencement of the tenancy on 22 December 2022 and that the last payment had been on 28 April 2023.
8. Ms Ramzan said that the updated rent statement had been sent to the Respondent and she referred to a copy of an email which had been sent to him on 3 April 2024 and which had been submitted to the tribunal.
9. Ms Ramzan submitted that the application could be determined without a Hearing being fixed.
10. The tribunal decided that it had sufficient information to determine the application and that there was no requirement for a Hearing to be arranged.

11. Documents before the tribunal

11.1 Private Residential Tenancy Agreement between the Applicant and the Respondent showing the start date of the tenancy to be 22 December 2022 and the monthly rent to be £720.

11.2 Copy Notice to Leave dated 20 September 2023.

11.3 Sheriff Officer's Certificate of Service confirming that Notice to Leave had been served on the Respondent on 21 September 2023.

11.4 Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 and dated 15 December 2023.

11.5 Rent arrears statement showing the arrears of rent as at 28 March 2024 to be £7920.

11.6 Rent arrears statement showing the arrears of rent as at the date of application to be £5760

11.7 Print of Title Sheet for ANG63405 (the Property).

11.7 Pre-action protocol letters dated 7 and 20 September 2023.

12 Findings in Fact

12.1 The Applicant is the owner of the Property.

12.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property with the tenancy commencing on 22 December 2022.

12.3 The monthly rent for the Property is £720.

12.4 As at the date of submission of the application, the rent arrears amounted to £5760.

12.5 As at 28 March 2024, the rent arrears amounted to £7920.

12.6 The Notice to Leave which was dated 20 September 2023 referred to Ground 12 and stated that it was being relied on by the Applicant as the reason for seeking recovery of the Property.

12.7 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 15 December 2023.

12.8 Proceedings for eviction commenced with submission of the application dated 18 December 2023.

13 Finding in Fact and Law

13.1 The Respondent has rent arrears amounting to £7920.

13.2 The Respondent has been in rent arrears for three or more consecutive months.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

S.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.

Schedule 3, Part 1 Ground 12

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

(2).....

(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.

Deliberations and Reasons

- 14 The tribunal had regard to the rent statement. The rent is £720 per month and, at 28 March 2024, the level of rent arrears was £7920. This represented arrears equivalent to eleven months' rent. The tribunal was satisfied that the rent arrears were substantial and that the Respondent has been in arrears of rent for eleven consecutive months and had been in arrears of rent for nine months when the application was made.
- 15 The tribunal was satisfied that the notice to leave was in order and that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.
- 16 The tribunal was satisfied that the Applicant is the owner of the Property, is the landlord in terms of the private residential tenancy agreement and is therefore entitled to make the application for an order of eviction.
- 17 The tribunal considered that it required to take a two stage approach in considering the application. Having determined that Ground 12 is met, it then requires to have regard to sections (3) (b) and (4) of Ground 12.
- 18 The tribunal was satisfied that the landlord had sent the necessary communications in terms of the pre-action protocol. Miss Ramzan said that the Respondent had not engaged with the Applicant in this regard. She referred to the letters dated 7 and 20 September 2023.
- 19 Neither Ms Ramzan or the Applicant were able to provide any information on the Respondent's position with regard to benefits. The Respondent said that, as far as he was aware, the Respondent was in employment.
- 20 The Applicant said that the Respondent lives in the Property with his partner and that there are no other residents.

- 21 The Applicant said that he has one other property which he lets out and that he and his wife live in a flat which they own and which has a mortgage. He said that the Property has no mortgage.
- 22 Miss Ramzan said that the Applicant had been relying on the rental income from the Property to finance the mortgage of the property in which he resides. She said that the Applicant has health issues which have been exacerbated as a result of the stress he has endured because of the non-payment of rent.
- 23 Ms Ramzan said that the Applicant had sustained legal expenses as a consequence of the eviction process.
- 24 Ms Ramzan referred to the copies of the pre-action protocol which had been sent to the Respondent and which signposted him to agencies he could approach for assistance. She said that the Applicant had made a number of attempts to have the Respondent engage with him and would have been prepared to discuss a payment plan in respect of the outstanding rent. Ms Ramzan referred to the letter of 7 September 2023 in which a proposed payment plan had been set out. She said that the Respondent had not responded to overtures made by the Applicant.
- 25 In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. It is a balancing exercise. The Respondent had chosen not to engage with the Tribunal process and had not submitted written submissions or participated in the case management discussion. The information the tribunal had about his personal situation was limited.
- 26 The level of rent arrears was considerable and the tribunal had no difficulty in finding the requirements of Ground 12 were met. It accepted that non-payment of rent would be causing financial prejudice to the Applicant. The Respondent has a contractual obligation to pay rent and has not done so over a period of eleven consecutive months.
- 27 The tribunal took into account the amount of the rent arrears, the period of time over which they had accrued and the Applicant's financial position as set out by Ms Ramzan. In weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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.

**Martin J. McAllister
Legal Member
18 April 2024**