



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Scotland) Act 2010

Chamber Ref: FTS/HPC/EV/24/0157

Re: Property at 101 Greenock Road, Inchinnan, Renfrew, PA4 9LD (“the Property”)

Parties:

Neil Donnelly, Lashmar, Tandridge Lane, Oxted, Surrey, RH8 9NN and Tracey Donnelly, The Old Mill, Houston Road, Crosslee, Johnstone, PA6 7AW (“the Applicants”)

Ailsa Livingstone and Daniel Smith, 101 Greenock Road, Inchinnan, Renfrew, PA4 9LD (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 101 Greenock Road, Inchinnan, Renfrew, PA4 9LD under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 2 December 2022, a Notice to Leave and email to the Respondents both dated 10 October 2023, a rent statement to 2 January 2024, letters dated 20 June, 27 June, 4 July and 2 October 2023 from Pennylane Homes Renfrew and an email dated 10 January 2024 addressed to Renfrewshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 12 February 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 17 April 2024 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 8 May 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 28 May 2024. This paperwork was served on the Respondents by Paul Miller, Sheriff Officer, Glasgow on 18 April 2024 and the Executions of Service were received by the Tribunal administration.
5. The Respondents did not lodge any written representations by 8 May 2024.
6. On 14 May 2024 the Applicants' solicitor forwarded an up to date rent statement to 2 May 2024 showing arrears had increased to £2925. Both Respondents were copied in on this email.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 28 May 2024 by way of teleconference. Ms Wooley from Bannatyne Kirkwood France and Co, solicitors appeared for the Applicants. There was no appearance by or on behalf of the Respondents despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/24/0158.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 2 December 2022, the rent statement to 2 May 2024, letters from Pennylane Homes Renfrew dated 20 June, 27 June, 4 July and 2 October 2023 and an email dated 10 January 2024 addressed to

Renfrewshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

9. Ms Wooley moved the Tribunal to grant an order for eviction. Arrears had increased from £2600 when the application was submitted and have now increased to £2925 as at 2 May 2024. Arrears had accrued over the last year. Although some payments were being made, arrears were still increasing and there was no prospect of the arrears being reduced to nil anytime soon. Pre action letters had been sent to the Respondents to highlight the arrears, encourage the Respondents to enter into an arrangement to clear the arrears and to seek advice. She further submitted that arrears had accrued when Mr Smith had a car accident and was absent from work. She understood he was in full time employment again.
10. Ms Wooley also submitted that Ms Livingstone had recently contacted her after she received the up to date rent statement sent on 14 May 2024. Ms Livingstone claimed that Mr Smith had changed the locks at the Property and as far as she could make out from what she had been told by Ms Livingstone the arrears had accrued after she left the Property. She directed Ms Livingstone to the Tribunal and gave her the dial in details for the CMD and urged her to seek independent legal advice.
11. She submitted the Local Authority would be obliged to provide the Respondents with temporary accommodation but was not aware whether the Local Authority had been in contact with the Respondents. The arrears were having a financial impact on her clients who were uncertain whether they would receive rent and were having to shuffle their finances. It was not sustainable for the tenancy to continue due to the ongoing arrears and the fact the relationship had broken down.
12. Following her call with Ms Livingstone, she believed Mr Smith lived alone. There were no dependents. In answering questions from the Tribunal, she was not aware whether Mr Smith claimed benefits following his car accident. There were a few issues with anti-social behaviour, most recently last month relating to a dispute regarding parking spaces.
13. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

14. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).
15. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
16. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.
17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expects to become entitled to make an application for an eviction order namely 10 November 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondents on 10 October 2023 by email. In the circumstances the Tribunal is satisfied the Respondents has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
18. The Tribunal considered the Respondents had not opposed the order for eviction. The Respondents' arrears were increasing and stood at £2925. the monthly rent being £650 with reference to the rent statement to 2 May 2024. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
19. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Applicants' agents had sent pre -action letters to the Respondents. The Respondents would have been fully aware of the arrears. The Tribunal was persuaded by Ms Wooley's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicants had clearly done everything they could to avoid taking action and assist the Respondents. On the other hand, the Respondents did not oppose the application. Mr Smith was in employment. Neither Respondent had

engaged with the Applicants to clear the arrears. Although it appeared Ms Livingstone may no longer be at the Property, the tenancy agreement was still continuing in her joint name with Mr Smith. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Renfrewshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Wooley, that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicants.

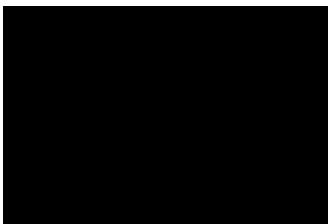
20. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondents were in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

21. The Tribunal granted an order for repossession. 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.



28 May 2024

Date