



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/23/2420

Re: Property at 13/8 Piershill Terrace, Willowbrae, Edinburgh, EH8 7EY (“the Property”)

Parties:

Ms Carol Waugh, Tala Hills 1 Block B Apartment 403B, Miltiadi Stylianov Leoforos, Cyprus, 8577 Paphos (“the Applicant”)

Ms Jacqueline Cogan, 13/8 Piershill Terrace, Willowbrae, Edinburgh, EH8 7EY (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 20th July 2023 the Applicant’s Agent 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 using Ground 12 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 2nd October 2020 and an initial rent of £750 per month;

- ii. Copy Notice to Leave dated 16th June 2023;
 - iii. Copy email dated 16th June 2023 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice;
 - v. Proof of service of section 11 Notice;
 - vi. Rent Statement.
3. The Tribunal wrote to the Applicant's agent on several occasions seeking additional information, including evidence that the Pre Action Requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with. The agent did not provide the evidence and the Tribunal issued a Direction to the agent by email of 5th October 2023. The agent was sent a reminder email on 31st October 2023. The agent replied to the email the same day but did not provide the evidence sought.
 4. The Application was served on the Respondent by Sheriff Officers on 29th November 2023.
 5. The Applicant's agent lodged a rent statement with the Tribunal on 26th January 2024, shortly prior to the Case management Discussion taking place.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Young of the letting agent, DJ Alexander. There was no attendance by the Respondent or any representative on her behalf.
7. 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.
8. Miss Young sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that Notice to leave had been served on the Respondent on 16th June 2023. At that time the arrears were £4086, and the monthly rent was £790. The current arrears are £9758.20. She confirmed that the Respondent is in full time employment and not receiving any benefits.
9. The Tribunal were satisfied that the ground had been established, and asked Miss Young to address the Tribunal on reasonableness. Miss Young said that there were a number of reasons to put forward. She said that her firm had made weekly calls to the Respondent, sent numerous emails and multiple members

of the property management team had visited the property. The Tribunal asked why this evidence had not been provided to the Tribunal following issue of the Direction. Miss Young said that she had been off for a period of time. The Tribunal pointed out that she had replied to the reminder email. She said that she did not recall and would have to check the position.

10. Miss Young said that the Applicant had appreciated that times were tough for people during the pandemic and the cost of living crisis but she had run out of options. Non payment of rent was impacting on her finances. She said that there was a mortgage on the property which the Applicant was having to pay.
11. Miss Young said that the respondent lived alone in the two bedroomed property, she had no dependents. She was not aware of any health or disability issues.
12. The Tribunal noted from the title deeds forming part of the papers there was no mortgage on the property. Miss Young said that she would need to double check the position with the Applicant.
13. In light of the fact that the Tribunal wished clarification of the point regarding the mortgage, and that the Direction had not been complied with the Tribunal decided to continue the CMD to another date. The Applicant is expected to comply with the Direction and lodge evidence that the pre action requirements have been complied with, and provide clarification of the Applicant's financial position particularly in relation to the existence or not of a mortgage on the property.

Subsequent to CMD

14. On 3rd May 2024 the Applicant's representative lodged a lengthy submission explaining that her firm had lost the Pre Action Requirement documentation in a system change, and lodging print outs from the system of all the attempts they had made to contact the Respondent. They also lodged a rent statement showing that the current arrears are £13,013.

Continued CMD

15. The Continued CMD took place by teleconference. The Applicant was represented by Miss Young of the letting agent, DJ Alexander. There was no attendance by the Respondent or any representative on her behalf.
16. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson recapped in relation to the CMD Note and asked Miss Young to address the two points outstanding.
17. Miss Young explained about the loss of the PAR letters but confirmed that the activity log had been lodged to show their attempts to communicate with the respondent. She also apologised for the miscommunication regarding a mortgage and confirmed that she had misinterpreted what the Applicant had

told her about supporting a vulnerable family member to pay their own mortgage. She confirmed that there had been no communication with any agency acting on behalf of the respondent since June 2023. The last attempt to contact the Respondent had been a phone call the day before the continued CMD. She confirmed that the Respondent lived alone in the two bedroomed property, had no known dependents or health condition, and was believed to be in employment.

Findings In Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 2nd October 2020;
- c. The rent is £750 per month;
- d. A Notice To Leave, dated 16th June 2023, was served timeously and correctly;
- e. The Application was served on the Respondents by Sheriff Officer on 29th November 2023;
- f. The current rent arrears are £13013;
- g. The respondent lives alone in the property;
- h. The Applicant does not know of any health conditions suffered by the Respondent;
- i. The Applicant does not know of the Respondent having any dependents living in the property.

Reasons for Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

18. The Tribunal now has to decide if it is reasonable to grant the eviction order.

19. The Tribunal were of the view in this case. that the Applicant had established Ground 12 given the extent of the rent arrears.

20. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the amount of the arrears, equivalent to seventeen months' rent, together with the lack of contact from the Respondent made it 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.

Alison Kelly

17/05/2024

Legal Member/Chair

Date