



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) 2016

Chamber Ref: FTS/HPC/EV/23/2725

Re: Property at 21 Inchbrae Drive, Aberdeen, Garthdee, AB10 7AJ (“the Property”)

Parties:

Mr Michael McFadyen, 1 Millburn Grove, Stoneywood, Bucksburn, AB21 9HW (“the Applicant”)

Miss Noella Abba, Miss Sueli Pinheiro, 21 Inchbrae Drive, Aberdeen, Garthdee, AB10 7AJ (“the Respondent”)

Tribunal Member:

Alison Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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

Background

1. On 10th August 2023 the Applicant 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 under Ground 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement showing a commencement date of 12th November 2021 and a rent of £800 per month;
 2. Copy Notice to Leave dated 6th June 2023;
 3. Copy email dated 6th June 2023 to the Respondents serving the Notice to Leave citing Ground 12 only;
 4. Section 11 Notice and proof of service;
 5. Rent Statement
3. The Application was served on the Respondent by Sheriff Officers on 11th December 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place on 2nd February 2024 by teleconference. The Applicant was represented by Mr Winchester of Winchester Lettings. The Respondents joined the call and represented themselves.
5. 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.
6. Mr Winchester confirmed that the balance of rent arrears outstanding had reduced to £8151 as the Respondents had made a payment of £800 recently. Mr Winchester sought an order for eviction in terms of ground 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that the respondents were ten months’ in arrears. He appreciated that the Respondents had made some payments towards the arrears but there was still a substantial amount outstanding.
7. The First Named Respondent spoke on behalf of both Respondents. She said that they were both very nervous and that she had a prepared statement. They were opposing the application.
8. The Tribunal returned to Mr Winchester for further information. He said that Ground 12 was satisfied as the Respondents had been in arrears for more than three consecutive months, and that the last time the rent was up to date was in June 2022. He also wished to use ground 12A despite it not featuring on the Notice to Leave. He could not give any reasons in law as to why the Tribunal should apply the ground, but he did consider it reasonable in light of the ground having been added to the legislation and being satisfied. He said that he was comfortable to proceed on Ground 12 only.
9. The First Named Respondent read out the prepared statement. She said that the respondents had both been struggling to pay the rent and also to buy food. They had experienced health issues, particularly the Second Named Respondent. They were both 21 years old and were hoping to earn enough

money to pay off the arrears. They are not in touch with their families for various reasons, even although they have family members as guarantors on the lease. They thought that they could make a substantial lump sum payment in the next few months. They had not applied for any benefits.

10. Mr Winchester said that he did approach the guarantors in the middle of 2022. The First Named Respondent's family had then tried to get in touch with her, which she did not want. Mr Winchester did not wish to become involved in a family matter.
11. Given the various issues disclosed by the Respondents the Tribunal, being satisfied that that ground 12 had been established to the extent of the arrears, decided to fix a Hearing on reasonableness.

Subsequent to CMD

12. The Tribunal issued Directions to each party.
13. The Applicant was directed to lodge written details of his position in relation to why it would be reasonable to grant the order, and a list of any witnesses to be called at the Hearing. The Applicant's agent lodged a written submission on 19th February 2024.
14. The Respondents were directed to lodge written details of their position in relation to why it would not be reasonable to grant the order, evidence of the Second Named Respondent's medical condition, evidence that they had approached appropriate agencies for help in attempting to access benefits which may assist with the rent and a list of witnesses they intend to call at the Hearing. There was no response to the Direction from the Respondents.
15. On 10th May 2024 the Applicant's agent lodged an up to date rent statement showing that the arrears had risen to £8923. The Respondents had made a payment each month, but each payment made was not sufficient to meet the monthly rent.

Hearing

16. The Hearing took place on 30th May 2024 by videoconference. The Applicant was represented by Mr Winchester of Winchester Lettings. The Respondents joined the call and represented themselves.
17. Mr Winchester confirmed that he was seeking an order for eviction. He had lodged an up to date rent statement, which showed the arrears were £8923 as at 17th May 2024. He said that since the CMD the Respondent had paid a total of £900, but these payments did not meet the monthly rent and the arrears had risen.

18. The Tribunal asked the Respondents why they had not complied with the Direction. Miss Abba said that they had not wanted to make excuses and thought it better to just come to the hearing and represent themselves. She said that they were deeply sorry to everyone for the situation. She said that they could not make the rent payments and had no means of getting the funds to do so.

19. The Tribunal noted that at the CMD the Respondents thought that they could make a lump sum payment. Miss Abba said that it had fallen through. They accepted that they could not continue in the tenancy.

Findings in Fact

- i. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 12th November 2021;
- iii. The monthly rent is £800;
- iv. A Notice To Leave, dated 6th June 2023, was served timeously and correctly;
- v. The Application was served on the Respondents by Sheriff Officer on 11th December 2023;
- vi. At the time the Notice to leave was served the arrears were £5883;
- vii. At the date the Application was made the arrears were £6307;
- viii. At the time of the CMD the arrears were £8151;
- ix. The arrears at the date of the hearing are £8923;
- x. The respondents do not have the means to pay the monthly rent.

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”.

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

The Tribunal were of the view in this case that the Applicant had established Ground 12 by provision of the rent statement showing the arrears.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The arrears now stand at nearly 11 months rental payments. The respondents accept that they cannot pay the monthly rent. The tenancy is not sustainable. The Tribunal considered in those circumstances that it was 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

30/05/2024

Legal Member/Chair

Date