



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/23/4531

Re: Property at No.1 Tillyfour Cottage, Tough, Alford, Aberdeenshire, AB33 8DX (“the Property”)

Parties:

Mr David MacRae, Tillyfour Bungalow, Tough, Alford, Aberdeenshire, AB33 8DX (“the Applicant”)

Mr Charles Jawahar-Lal-Saksena, No.1 Tillyfour Cottage, Tough, Alford, Aberdeenshire, AB33 8DX (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 18th December 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 Grounds 12 and 12A 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 1st February 2018 and a rent of £525 per month;
 - ii. Copy Notice to Leave dated 2nd August 2023;

- iii. Copy email dated 2nd August 2023 to the Respondents serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;
 - v. Rent Statement from February 2018 to November 2023;
 - vi. Copy Disposition
 - vii. Copy documentation from Registers of Scotland dated 4th November 2023 confirming application to register disposition;
 - viii. Letter dated 1st November 2023 from Shepherd & Wedderburn to the Respondent confirming the change of landlord;
 - ix. Pre Action Protocol letter dated 2nd August 2023.
3. The Application was served on the Respondent by Sheriff Officers on 4th March 2023.
 4. On 22nd March 2023 the Respondent sent an email to the Tribunal attaching some emails on which the original landlord agreed to a reduction in the rent and a backdating of the reduction and asking for an extension of time to lodge bank statements. He also said that he had poor signal strength on his phone.
 5. On 21st March 2023 the Applicant's solicitor sent an email lodging fresh Inventory of Productions containing a new rent statement with the rent reduction and backdating included.
 6. On 28th March 2023 the Tribunal emailed the Respondent advising him he had a further seven days to lodge documents and that he would need to make arrangements to join the conference call.
 7. On 2nd April 2024 the Respondent sent an email to the Tribunal saying that he was disabled and expected reasonable adjustments to be made. He did not say what disabilities he had or what reasonable adjustments he required.

Case Management Discussion

8. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mr Doran of Raeburn, Christie, Clark & Wallace, Solicitors. There was no attendance by the Respondent or any representative on his behalf.
9. The Tribunal were satisfied that the Respondent had received sufficient notice of the CMD and the manner in which it would be held, and decided to proceed in his absence.
10. 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.

11. Mr Doran sought an order for eviction in terms of grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He addressed the Tribunal on how the Applicant came to have title to raise the application. He said that, having recalculated in accordance with the email provided by the Respondent showing that the rent reduction was to be backdated, and taking in to account a payment made by the Respondent on 1st April 2024 of £425, the current arrears stood at £18378.44.
12. Mr Doran said that the Respondent was forty-four months in arrears and had effectively been living rent free for that period. The property is a two-bedroom cottage. The Respondent lives there alone, he is a man in his sixties, and has told people that he is retired. The Respondent has failed to respond to the Pre Action Protocol letter, sent on and to the Notice to Leave. He has not disclosed any defence to the application, nor has he denied that he owes the sum sought by way of arrears. He sought time to lodge further documentation with the Tribunal but has not lodged any further documentation.
13. Mr Doran said that the Respondent has complained about lack of water but has denied access to allow it to be investigated. This is part of a pattern of the Respondent denying access to the property, including for safety checks. The Applicant is worried about the safety of the property. There are several cottages on the land, but this is the only one still occupied. They all need substantial refurbishment and it is not the Applicant's intention to carry out that refurbishment and let them out in the short term. The property is believed to be full of boxes and rubbish. The Respondent has a number of old vehicles outside the property, which are also full of rubbish and boxes. The respondent has claimed to have a disability but has not specified its nature. The Applicant has seen the Respondent walking and driving.
14. Mr Doran said that he had no information about whether or not the Respondent had applied for benefits. Since the Applicant had become the owner only two payments had been received towards rent and they had come from the respondent.

Findings in Fact

- a. The Respondent entered into a Private Residential Tenancy Agreement with the previous landlord in respect of the property;
- b. The tenancy commenced on 1st February 2018;
- c. A Notice To Leave, dated 2nd August 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Applicant purchased the property from the previous landlord on and the tenancy was assigned to him;
- f. The Applicant's solicitor wrote to the Respondent on 1st November 2023 advising him of the change of landlord;
- g. The Application was served on the Respondent by Sheriff Officer on 4th March 2024;

- h. The arrears currently stand at £18378.44;
- i. At the time the Notice to Leave was served the arrears stood at £16104.44;
- j. The Respondent is a single man in his sixties and is retired;

Reasons for Decision

15. 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

“(d)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”.

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

17. The Tribunal were of the view in this case that the Applicant had established Grounds 12 and 12A of Schedule 3 of the Act. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The rent arrears equate to forty four months of rent. The Respondent has not denied the amount outstanding, nor has he produced any documentation to support a different amount being outstanding. The Tribunal considered that the significant size of the arrears 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.

A Kelly

8th March 2024

Legal Member/Chair

Date