



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/23/4568

Re: Property at Flat 2/2, 18 Cyril Crescent, Paisley, PA1 1GT (“the Property”)

Parties:

Mr Jatinder Gill, 10 St Kentigern's Road, Lanark, Lanarkshire, ML11 7AS (“the Applicant”)

Mr Kevin Brown, Flat 2/2, 18 Cyril Crescent, Paisley, PA1 1GT (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 28 March 2022;
 - (ii) Notice to Leave dated 26 October 2023 stating that proceedings for possession will commence no earlier than 26 November 2023 and citing grounds 12 and 12A, together with proof of service on the Respondent by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Renfrewshire Council together with proof of service by email dated 19 December 2023;
 - (iv) Rent Statement;
 - (v) Email correspondence between the Applicant's representative and the Respondent; and
 - (vi) Copy letter from the Applicant's representative to the Respondent dated 11 April 2023 in compliance with the pre-action protocol.
- 2 By Notice of Acceptance of Application dated 22 January 2024 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 On 18 April 2024 the Applicant's representative emailed the Tribunal with an updated rent statement confirming arrears of £12,490 as at March 2024.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference. The Applicant was represented by Ms Gwenan Whyte of Jackson Boyd Solicitors. She was accompanied by her colleague Craig McCann as an observer. The Respondent was not in attendance.
- 5 The Tribunal were alerted to an email which had been sent by the Respondent to the Tribunal at approximately 8am that morning. The email was in the following terms:-

"I just have a few notes first one being is I have two young kids who are off school sick today and are in my care so I was looking to postpone the hearing. I can produce proof of the absence from the school if need be?"

In addition yesterday was the first time since the very start that I received any correspondence regarding the case via email due to the applicant's solicitor sending correspondence to the wrong email address.

Furthermore I have sent back the form "Application for a time to pay direction" with nothing back?

Could you advise on my options please?"

- 6 The Tribunal then sought comments from Ms Whyte on the request for postponement. Ms Whyte stated that she would oppose the request. The Applicant was aware that the Respondent had two children however understood that they resided with their mother during the week. The Respondent resided alone. The Respondent had produced no evidence to support the request. Ms Whyte stated that the Applicant would be prejudiced by any further delay in terms of the time it had taken to get to this point against a background of significant arrears. Ms Whyte pointed out that the Tribunal had served the Respondent with the application paperwork and he had been given the opportunity to make submissions in response but had not done so. Ms Whyte confirmed that the Applicant had last been in touch with the Respondent in December 2023 regarding the arrears but there had been no communication from the Respondent since then.
- 7 The Tribunal held a short adjournment to consider the request for postponement. Upon resuming the Case Management Discussion the Tribunal determined to refuse the request. The Tribunal took into account Rule 28 of the *First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017* which states that the Tribunal may only postpone a hearing at the request of a party on cause shown. The Tribunal did not consider that test to have been met in this case. The Respondent had been served with the application paperwork by Sheriff Officers in March 2024. The Tribunal had received no response from him up until the email with the postponement request. There was nothing before the Tribunal to indicate his position regarding the application. Furthermore the Case Management Discussion was taking place by teleconference therefore the Tribunal could see no reason as to why the Respondent was unable to join.
- 8 The Tribunal also took into account the prejudice to the Applicant in a postponement of the matter. The arrears in this case were significant. The Respondent had not put anything before the Tribunal to contradict the Applicant's position in this regard. No rent had been paid for a year.
- 9 The Tribunal noted that the Respondent had been served with the application paperwork which included the date and time of the Case Management Discussion and instructions for joining the teleconference. The Tribunal therefore determined to proceed in his absence, having been satisfied that the notification requirements under Rule 17 of the *First-tier Tribunal for Scotland Rules of Procedure 2017* had been complied with in that reasonable notice of the Case Management Discussion had been given to the Respondent.
- 10 The Tribunal then heard from Ms Whyte on behalf of the Applicant. She confirmed that the Applicant was seeking an eviction order. The level of arrears stood at £12490 as at the end of March. The rent was £850 per month. The Respondent had paid nothing since April 2023. That represented a significant period of time during which no rent was paid. The Applicant had complied with his obligations in terms of the pre-action protocol by sending correspondence to the Respondent in April 2023. There had initially been some engagement from the Respondent at that point with promises of payment. However nothing had materialised. The Applicant had continued to correspond with the Respondent on a monthly basis regarding the rent arrears, asking why rent was not being

paid and what his proposals for repayment were. There had been some ad hoc communication from the Respondent up until December 2023 when it ceased. The Respondent had stated to the Applicant on a number of occasions that he was in “good employment” and in a position to make payments. However he had paid nothing. Ms Whyte confirmed that the Respondent resided alone. His two children resided with their mother during the week and she understood the Respondent had contact with them at weekends. There had been no suggestion of any universal credit entitlement or payments, on the basis that the Respondent was working and receiving an income. He had not stated at any point that he was unemployed.

- 11 Ms Whyte confirmed that the Applicant was suffering financially as a result of the increasing rent arrears. This was the only property that he let out. He had a mortgage over the property and was incurring costs on a monthly basis. He sought the eviction order to mitigate the impact going forward.

Relevant Legislation

- 12 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
- (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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

(3) The First-tier Tribunal may find that the ground named by subparagraph (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 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.

Schedule 3, Part 12A

(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

13 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application. Further, in view of the fact that the notice was served prior to 1 April 2024 the savings provisions afforded by the Cost of Living (Tenant Protection) (Scotland Act 2022 (Savings

Provisions) Regulations 2024 apply and therefore ground 12A can be relied upon by the Applicant.

Findings in Fact

- 14 The parties entered into a Private Residential Tenancy Agreement dated 28 March 2022 which commenced on that same date.
- 15 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £850 per calendar month.
- 17 On 26 October 2023 the Applicant delivered a Notice to Leave to the Respondent by email to the address stated in the said Tenancy Agreement. The Notice to Leave cited grounds 12 and 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 November 2023.
- 18 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 19 As at the date of service of the Notice to Leave arrears in the sum of £6,540 were outstanding.
- 20 As at the date of the Case Management Discussion arrears in the sum of £12940 were outstanding.
- 21 The Respondent has paid nothing to the rent account since April 2023.
- 22 The Respondent has made offers of payment which have not materialised.
- 23 The Respondent resides alone in the property. The Respondent has access to his two children at weekends.
- 24 The arrears are not due, either in whole or in part, to the failure or delay in any payment of a relevant benefit.

Reasons for Decision

- 25 The Tribunal was satisfied that it had sufficient information upon which to make a decision following submissions made at the Case Management Discussion, and that to do so would not be prejudicial to the parties. There were no issues to be resolved that would necessitate a hearing being fixed.

- 26 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon grounds 12 and 12A of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 27 Based on the rent statement produced by the Applicant, and the submissions from Ms Whyte at the Case Management Discussion, the Tribunal was satisfied that at least six months rent had been outstanding when the Notice to Leave was served upon the Respondents and as at the date of the Case Management Discussion. The Tribunal was further satisfied that the arrears were not due to a failure or oversight in the payment of a relevant benefit. There was nothing before the Tribunal to contradict the evidence from the Applicant in this regard.
- 28 The Tribunal therefore considered the question of reasonableness. The Tribunal found Ms Whyte to be wholly credible in her submissions. The arrears in this case were significant, amounting to £12490 as at the date of the Case Management Discussion. No rent had been paid for over a year. Even in circumstances where the Respondents had entered the proceedings the Tribunal would find it difficult to justify the reasonableness of not making an order where there were arrears of that level.
- 29 The Respondent had failed to enter the process therefore the Tribunal had to rely upon the information from the Applicant regarding his personal circumstances. The Tribunal noted he was believed to be employed and resided alone with access to his two children on weekends. The Respondent had failed to provide any explanation for the arrears and his failure to make payment. The Tribunal could therefore identify no relevant factors that would outweigh the weight of the arrears in this case in terms of assessing reasonableness. Accordingly taking into account the particular facts and circumstances of this case the Tribunal was ultimately satisfied that an eviction order was reasonable.
- 30 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.

R O'Hare

3 May 2024

Legal Member/Chair

Date