



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/0274

Re: Property at 2C Darroch Way, Cumbernauld, G67 1QA (“the Property”)

Parties:

Mr Allan Whittaker, 58 Earl Gardens, Glasgow, G5 0RS (“the Applicant”)

Mr Daniel McAulay, 2C Darroch Way, Cumbernauld, G67 1QA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (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 recovery of possession of the property be granted.

Background

1. By application lodged on 18 January 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act (rent arrears for three or more consecutive months). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £5,950.

2. Following initial procedure, on 16 February 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 19 April 2024, Sheriff Officers served a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 29 May 2024. Written representations were to be lodged by 9 May 2024. No written representations were submitted by the Respondent.

Case Management Discussion

4. The CMD took place on 29 May 2024 at 10am by telephone conference call. The Applicant was represented by Mrs Donna Cramb, Lettings Manager, of K Property letting agents. The commencement of the CMD was delayed for approximately 5 minutes to see if the Respondent would join the call but he did not do so.
5. After introductions and introductory remarks by the Legal Member, Mrs Cramb provided the background to the application and answered a number of questions from the Tribunal Members. She confirmed that there have been no recent payments towards rent and that the rent arrears now amount to £9,520. The last communication she had with the Respondent was in November 2023 when they were trying to get access to the Property to carry out a periodic inspection. However, the Respondent did not allow access, citing mental health difficulties. As far as she is aware, the Respondent is still living at the Property as they drive past from time to time and note that the blinds move up and down, etc. Mrs Cramb confirmed that the difficulties with the rent began around September 2022, when payments started being missed. The Respondent explained at that time that he was involved in a dispute regarding his children, who lived with their mum, and that he was having financial difficulties as he was having to use his money to pay his solicitor’s fees. Mrs Cramb does now know whether this matter has now resolved. The Respondent had been off work sick for a period too but she understands he had returned to work after that. Mrs Cramb was asked about their communications with the Respondent and, in particular, if they had followed the pre-action requirements protocol. Mrs Cramb confirmed that they had and had used the recommended government templates. She confirmed they had written to the Respondent on 22 December 2022 and 24 March 2023, prior to the Notice to Leave being issued on 17 May 2023. She confirmed that these letters had contained all the necessary information required concerning the level of arrears and debt advice options. She had also reached out to him many times and spoken to him about options he could try for advice and the types of help available if he was struggling with low income. She was told by the Respondent that he had approached North Lanarkshire Council about his housing situation but that they had advised him to sit tight until an eviction order was granted by the Tribunal. She stated that she genuinely considers that local authority housing would be the best option for him as he is clearly struggling to pay rent at the current rate. Mrs Cramb

stated that they had previously offered to move him into a one bedroom property which would have had a lower rent but he did not take them up on this. He offered to pay his rent weekly at one point and made some payments of around £40 per week over a period in June/July 2023 but those payments then stopped too.

6. Reference was made to the rent statement produced with the application and there was some discussion regarding the format of that. Mrs Cramb explained that they allocated payments back to cover the oldest missed payments first but appreciates that this method makes it look as if the account was not in arrears for as long as it actually had been. She confirmed that it can be seen from the 'payments made' column that payments were not being made every month and reiterated that the rent arrears had arisen since September 2022. Mrs Cramb confirmed that she would address this in future applications to make the situation clearer. In this case, Mrs Cramb confirmed that the rent account had been in arrears for many more months' than the 3 consecutive months of arrears required when the Notice to Leave was served.
7. The Legal Member explained regarding the Tribunal also having to be satisfied that it is reasonable in the circumstances for an eviction order to be met. As to the Applicant's circumstances, Mrs Cramb referred to the substantial amount of arrears owing and explained that this was causing financial pressure and stress to the Applicant, given the length of time the process has taken. She explained that this is the only Property the Applicant lets out and that he is still paying a mortgage over the Property. He is therefore having to dip into his savings to cover the ongoing mortgage payments as he does not wish to default on his mortgage. There was not a great deal of profit made on this Property on a month to month basis as the mortgage payment is not much less than the rent charged. The Applicant also has landlord responsibilities to pay insurance and other things in relation to the Property on an ongoing basis.
8. Other than what had already been covered in terms of the Respondent's circumstances, Mrs Cramb confirmed that he lived at the Property alone and just had his children over for access visits. She does not know if these visits still happen. He worked with a local company as a full-time driver and, although she understands that he was off sick for a period, Mrs Cramb understood that he had subsequently returned to that employment. She has no knowledge of him ever being in receipt of state benefits, although she had urged him to find out if he could get any help if he was on a low income. Although the Respondent had told her he had spoken to the local authority previously, Mrs Cramb does not know of any update on that, or any of the Respondent's personal circumstances, given that he has not engaged with them for some time now.
9. The Tribunal considered the application and thereafter confirmed that the eviction order would be granted. There was brief discussion regarding the process to follow and Mrs Cramb was thanked for her attendance and all the additional information she had been able to provide the Tribunal with.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 29 July 2022.
3. The rent in terms of the PRT is £595 per calendar month.
4. The Respondent initially paid rent due but started missing payments in or around September 2022.
5. The rent account has been continuously in arrears since around October 2022.
6. When the Notice to Leave was served, the rent account had been in arrears for more than 3 consecutive months.
7. The last payments made by the Respondent towards rent were in June and July 2023 or around £40 each.
8. No further payments have been received towards rent since July 2023.
9. Rent arrears amounted to £5,950 when this application was made, and now amount to £9,520.
10. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was sent to the Respondent by recorded delivery post on 17 May 2023, signed for as delivered on 18 May 2023.
11. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 17 June 2023.
12. The Tribunal Application was submitted on 18 January 2024.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent did not lodge any written representations regarding the application nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD on behalf of the Applicant.

2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) as follows:-

“Rent arrears

12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).

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

- (a)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, and*
- (b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

- (i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
- (ii)a payment on account awarded under regulation 91 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.

(6)Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, as outlined above, to grant the eviction order sought. The tenancy commenced in July 2022. The rent account had been in arrears for a significant period of time (continuously from around October 2022) and the arrears now amount to a significant sum (£9,520) which the Tribunal was satisfied was having a negative impact on the Applicant's finances, given that he had ongoing outgoings to pay in respect of the Property, including the monthly mortgage payment. This is the only property that the Applicant rents out. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied from the Applicant's representative's oral submissions at the CMD, that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent, offer him advice and resolve the arrears situation with him. Although, the Respondent had initially engaged with the Applicant's letting agent and offered an explanation for the rent arrears, he has not engaged for some time. He has failed to adhere to a previous payment plan. In addition, he did not allow the Applicant's letting agents access to the Property for periodic inspection in November 2023 and has not communicated with them since that time. He advised the letting agents previously that he had been in contact with the local authority about his housing situation but had not provided the letting agents with any further update on this matter. The Respondent did not submit any written representations to the Tribunal, nor attended the CMD of which he had been properly and timeously notified. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member

—

29 May 2024
Date