



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/24/0406

Re: Property at Flat 2/1, 4A Bentinck Street, Greenock, PA16 7RT (“the Property”)

Parties:

Keogh & Savage (Investments) Ltd, 8 Cranshaws Drive, Redding, Falkirk, FK2 9UY (“the Applicant”)

Mr Derek Leitch, Flat 2/1, 4A Bentinck Street, Greenock, PA16 7RT (“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 24 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 12A of Schedule 3 to the 2016 Act (substantial rent arrears). 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, a Rent Statement and documentation showing that the pre-action requirements had been carried out.

2. Following initial procedure, on 23 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 22 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 10 May 2024. No written representations were submitted by the Respondent.

Case Management Discussion

4. The CMD took place on 29 May 2024 at 2pm by telephone conference call. The Applicant, Miss Flora Keogh, was in attendance. The commencement of the CMD was delayed 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, Miss Keogh provided the background to the application and answered a number of questions from the Tribunal Members. She confirmed that there have been no further payments towards rent from the Respondent and that the rent arrears will amount to £4,466.23 as at 3 June 2024. The last communication she had with the Respondent was in September 2023 and she suspects that he may no longer be living in the Property. She has been unable to get access which concerns her as she needs in to check the condition of the Property and that there are no health and safety issues, if the Respondent has indeed left. Miss Keogh explained that she has been monitoring the gas meter at the Property and it is showing that there has not been any recent usage. The Legal Member confirmed that the Tribunal papers were served by Sheriff Officers on 22 April 2024 and explained that they carry out certain checks when serving papers to establish if the person is still resident and that they would report back to the Tribunal if they had not been able to satisfy themselves about this. In any event, Miss Keogh confirmed that she is anxious to obtain an order as soon as possible in order that she can recover the Property.
6. Reference was made to the rent statement and Miss Keogh advised that the last payment received was in December 2023. She thinks this was from Universal Credit as she understood from the Respondent that he was in receipt of Universal Credit latterly. Miss Keogh had had no direct communication with the benefits agency. She advised that the Respondent had only been in the Property for a few months before his rental payments became erratic. She suspects that he plays the system and the reason his benefits payments were stopped is because he has moved on to another address and is claiming there. She said that he was initially working with a home lets company but then told her that he had changed jobs several times and had also had periods when he was not working. She feels that he had been stringing her along and just said anything to get to stay on at the Property for as long as he could. She knew

about the difficulties being experienced by landlords trying to get tenants out on the basis of 3 months' rent arrears, due to government policy, so held off serving notice until the Respondent was owing over 6 months' rent so that she could use that eviction ground. She is frustrated about all the delays in the process and considers this is unfair on landlords, especially in cases such as this one where she suspects the Property is already empty and is anxious about what she will find when she is able to take entry.

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 granted. As to the Applicant's circumstances, Miss Keogh explained that she is fortunate in that the Property is owned outright and she has no mortgage to pay. She also rents out a few other properties. However, all the delays have meant that she is now owed a substantial amount of money in rent arrears and has yet to ascertain what condition the Property will be in or whether there will also be unpaid utilities, etc.
8. Other than what had already been covered in terms of the Respondent's circumstances, Miss Keogh confirmed that he lived at the Property alone, although had his young son staying with him now and again, according to neighbours. She does not think he had any physical health issues but may have had mental health issues as there had been an incident at one point where the Police had turned up looking for him and he had subsequently been found. Miss Keogh was not aware of any update as to the Respondent's personal or working circumstances, given that he has not engaged with her 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 Miss Keogh was thanked for her attendance.

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 3 December 2021.
3. The rent in terms of the PRT is £380 per calendar month.
4. The Respondent initially paid rent due but started missing payments after a few months and payments became erratic or were missed altogether.
5. Between May 2023 and December 2023, regular monthly payments were made towards rent of £294.
6. The last payment towards rent was the sum of £294 on 6 December 2023.

7. When the Notice to Leave was served, the rent arrears owing were £2,566.23, which equates to more than 6 months' rent.
8. Rent arrears have continued to increase and will amount to £4,466.23 as at 3 June 2024.
9. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was sent to the Respondent by email on 21 December 2023.
10. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 22 January 2024.
11. The Tribunal Application was submitted on 24 January 2024.
12. 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.
13. 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 by 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 substantial rent arrears (Ground 12A of Schedule 3 to the 2016 Act, as amended) as follows:-

“Substantial rent arrears

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,

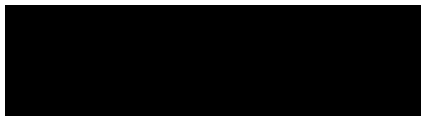
(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”

The Tribunal was satisfied that all elements of Ground 12A 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 December 2021 and the rent account had been in arrears for a significant period of time and the arrears now amount to a significant sum (over £4,000). Although the Applicant advised that there was no mortgage over this Property and that the Applicant rents out some other properties, the Tribunal was satisfied that the level of rent arrears was having a negative impact on the Applicant's finances, particularly given the length of time it is taking to recover possession of the Property. The Applicant mentioned their other responsibilities as landlord to carry out necessary checks and that, as they have been unable to access the Property for some time, they do not know what condition it will be in or if they will be able to recover any of their financial losses from the Respondent. 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 application

paperwork and the submissions of the Applicant at the CMD, that the Applicant had complied with the pre-action requirements, including seeking to engage with the Respondent to resolve the arrears situation with him. Although, the Respondent had previously engaged to some extent with the Applicant, he has not engaged for some time. He has failed to adhere to previous payment arrangements that he undertook. The Respondent had not submitted 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.



Legal Member

29 May 2024
Date