



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/23/4391

Re: Property at 27 Kinnaird Place, Dunfermline, KY12 0XL (“the Property”)

Parties:

Mr Kyle Chisholm, 3 Willow Crescent, Rosyth, KY11 2ZS (“the Applicant”)

Mr Keith Peter Donald, 27 Kinnaird Place, Dunfermline, KY12 0XL (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Helen Barclay (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;
- (ii) Notice to Leave dated 19 September 2023 stating that proceedings for possession will commence no earlier than 20 October 2023 and citing ground 12, together with proof of service on the Respondent by email on 19 September 2023;
- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Fife Council together with proof of service by email dated 6 December 2023;

- (iv) Rent Statement; and
 - (v) Copy correspondence from the Applicant's representative to the Respondent in compliance with the pre-action protocol.
- 2 By Notice of Acceptance of Application 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 29 April 2024 the Applicant's representative emailed the Tribunal with an updated rent statement confirming arrears of £6,723.50 as at April 2024.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference. The Applicant was represented by Mr Turner of Dyer and Co. He was accompanied by Ms Tracy Lang as an observer. The Respondent was not in attendance. The Tribunal noted that he 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.
- 5 The Tribunal then heard from Mr Turner on behalf of the Applicant. He confirmed that the arrears now stood at £7336.35. The arrears had begun to accrue in May 2023 and since then only one payment had been made to the rent account by the Respondent. There had been no payments for the last eleven months. The Applicant understood that the Respondent was awaiting the outcome of the Tribunal proceedings and had no intention of making any payments. Notwithstanding he remained in the property. Mr Turner explained that there had been attempts to enter into payment arrangements with the Respondent and keep him in the tenancy. Meetings had taken place in person and by telephone. However the Respondent was not willing to engage. He had simply told the Applicant's representative that he could not afford the rent any more. Mr Turner confirmed that the Respondent had paid rent fairly regularly until a rent increase in July 2023. The rent had increased from £595 to £612.85. The Applicant's representative had tried to discuss with the Respondent whether he would be able to maintain payments of £595 per month but the Respondent had not been willing to do so. In response to questions from the Tribunal Mr Turner advised that he was not aware of any entitlement to benefits on the part of the Respondent. The tenancy had been fairly straightforward until

the arrears began to accrue. The Respondent was born in 1962 and resided in the property alone, with no dependents. He was believed to be in employment.

Relevant Legislation

- 6 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.

7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact

8 The parties entered into a Private Residential Tenancy Agreement which commenced on 4 October 2018.

9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

10 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £595 per calendar month.

- 11 The rent was increased to £612.85 per month on 4 July 2023.
- 12 On 19 September 2023 the Applicant delivered a Notice to Leave to the Respondent by email to the address stated in the said Tenancy Agreement. The said Tenancy Agreement permits the service of notices by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 20 October 2023.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 As at the date of service of the Notice to Leave arrears in the sum of £2433.55 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £7336.35 were outstanding.
- 16 The Respondent has paid nothing to the rent account since 5 June 2023.
- 17 The Respondent has refused to enter into payment arrangements to address the ongoing rent and arrears despite the Applicant's attempts to engage with him.
- 18 The Respondent resides alone in the property.
- 19 The Respondent was born in 1962.
- 20 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

- 21 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.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 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.
- 23 Based on the rent statement produced by the Applicant, and the submissions from Mr Turner at the Case Management Discussion, the Tribunal was

satisfied that for three or more consecutive months the tenant has been in arrears of rent when the Notice to Leave was served upon the Respondent 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 evidence this.

- 24 The Tribunal therefore considered the question of reasonableness. The Tribunal found Mr Turner to be wholly credible in his submissions. The arrears in this case were significant, amounting to £7336.35 as at the date of the Case Management Discussion. No rent had been paid for nearly 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.
- 25 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. 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.
- 26 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.

14 May 2024

Legal Member/Chair

Date