



Decision 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/24/1286

Re: Property at 12 Brodrick Square, Bishopbriggs, Glasgow, G64 1NR (“the Property”)

Parties:

Mr Thomas Collins, 8 Shiel Road, Bishopbriggs, Glasgow, G64 1HS (“the Applicant”)

Ms Joanne Love, 12 Brodrick Square, Bishopbriggs, Glasgow, G64 1NR (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Sandra Brydon (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 Eviction be granted.

Background

1. On 15 March 2024 the Applicant’s representative 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 using Ground 12 and Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - Copy Private Residential Tenancy Agreement showing a commencement date of 12 October 2021 and an initial rent of £650 per month;
 - Copy Notice to Leave dated 22 November 2023;
 - Copy sheriff officer execution of Notice to Leave dated 22 November 2023
 - Section 11 Notice;

- Proof of service of section 11 Notice to Local Authority;
 - Rent Statement.
 - Copy of Letters sent to the Respondent re Pre-Action Requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
3. The application was served personally on the Respondent by Sheriff Officers on 1 May 2024.
 4. The application for Eviction was conjoined with an application for Payment under Chamber reference FTS/HPC/CV/24/1287.

The Case Management Discussion

5. The Application called for a Case Management Discussion (“CMD”) by conference call at 2pm on 6 June 2024. The Applicant was represented by Mr Gallagher, solicitor. The Respondent was represented by Mr Raymond Heath, Housing advice worker, CAB East Dunbarton. Both the Applicant and the Respondent were also on the call with their representatives.
6. Mr Heath said that the Respondent was not opposing the application for Eviction which was in relation to rent arrears for the Property. She did not dispute that the paperwork had been served on her correctly. She was well aware of the rent arrears, and had struggled from the outset to meet the rent due. She recognised that she needs to move, and that the Property is quite simply unaffordable for her. At the time that the tenancy commenced she was in receipt of Universal Credit and Personal Independence Payment. In or around June 2023, she had commenced employment part-time. Her small job entailed her working as a cleaner for 15 hours per week. She still holds that job. She requires to send in confirmation of her payslips on a regular basis to the Benefits Agency. When she commenced this employment her Universal Credit was cut from £450 per month to £377 per month. The rental due for the Property is £650 per month so there has been an immediate shortfall from the commencement of the tenancy. Mr Heath also confirmed that no arrears had accumulated by virtue of any difficulties with payment of a relevant benefit wholly or in part.
7. Mr Heath did not oppose the application for Payment either. He had instructions simply to point out that the Respondent had experienced difficulties in relation to her personal circumstances. Her health had not been good and she had received treatment for cancer. She is also prescribed antidepressant medication for ongoing depression. The Respondent has registered a claim with the local authority for re-housing. Mr Heath said that the authority had been made aware of the CMD happening today. The local authority will not progress her housing application until a decision has been made by the Tribunal in respect of the eviction.

8. Mr Gallagher invited the Tribunal to grant the Order for Eviction. He said that the Applicant had received no rent at all for the past month, even for the Housing Benefit part of the rent. The Applicant had contacted the Housing Department and was advised that the Respondent had been in touch, and had asked for the housing benefit element of her payment to be paid to her directly, as opposed to the Applicant. He submitted that the rent arrears are quite substantial. The Applicant is currently receiving no rental at all for the Property and he still has a mortgage to pay over it.
9. Mr Gallagher sought an order for eviction in terms of ground 12 and 12 A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. These are on the grounds that rent arrears are due over 3 consecutive months at the date of the CMD, and also that there are substantial arrears of rent, in excess of 6 months.
10. Arrears first arose on 12 October 2021, at the start of the tenancy and the Respondent has remained in arrears since then. From the commencement of the tenancy agreement, the Respondent has paid less than the required rent. Rent arrears have continued to accrue for the duration of the tenancy. The current arrears are £6865.91.

Findings In Fact

11. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 12 October 2021;
 - (ii) In terms of Clause 7 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £650 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 and 12 A of Schedule 3 to the 2016 Act, and which was served on 22 November 2023;
 - (iv) On 22 November 2023 the Respondent was in rent arrears over three consecutive months;
 - (v) The Respondent has been in continuous arrears of rent since October 2021;
 - (vi) The Respondent is in arrears of rent amounting to £6865.91 at the date of the CMD
 - (vii) No rent arrears have accrued as a consequence of delay or failure of payment of a relevant benefit.
 - (viii) The Applicant has complied with the Pre-Action Protocol
 - (ix) It is reasonable to grant the Order for Eviction
 - (x) The Respondent lives alone in the Property and does not oppose the Application

Reasons for Decision

12. *Section 51 of the 2016 Act states as follows:*

51 (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.*

13. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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

(2) (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.

14. Ground 12 A states 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.

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

The Tribunal were of the view in this case that the Applicant had established

Ground 12 and Ground 12 A given the extent of the rent arrears. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the amount of the arrears, together with the fact that the Respondent did not oppose the Application and candidly admitted that it had not been affordable for her from the outset 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.

Yvonne McKenna

Legal Member/Chair

6 June 2024

Date