



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/24/0482

Re: Property at 11 Glenlee Street, Hamilton, South Lanarkshire, ML3 0QJ (“the Property”)

Parties:

Alan Campbell Properties Ltd, Limetree Garage, Glasgow Road, Hamilton, ML3 0RA (“the Applicant”)

Keith Terron Hill, 11 Glenlee Street, Hamilton, South Lanarkshire, ML3 0QJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 11 Glenlee Street, Hamilton, South Lanarkshire, ML3 0QJ under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 1 July 2022, a Notice to Leave and email to the Respondent both dated 22 January 2024, a rent statement to 22 January 2024, letters dated 8, 15 and 22 September 2023 from Excel Lettings to the Respondent and an email dated 30 January 2024 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 1 March 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 21 May 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 11 June 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 27 June 2024. This paperwork was served on the Respondent by Andrew McLean, Sheriff Officer, Glasgow on 30 May 2024 and the Execution of Service was received by the Tribunal administration.
5. On 12 June 2024 the Applicant’s solicitor forwarded an up to date rent statement to 1 June 2024 showing arrears of £2780. The Respondent was copied in on this email.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 27 June 2024 by way of teleconference. Ms Wooley from Bannatyne Kirkwood France and Co, solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/24/0483.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 1 July 2022, the Notice to Leave and email to the Respondent both dated 22 January 2024, a rent statement to 1 June 2024, letters dated 8, 15 and 22 September 2023 from Excel Lettings to the Respondent and the email dated 30 January 2024 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

8. Ms Wooley moved the Tribunal to grant an order for eviction. Arrears had increased from £1280 when the application was submitted and have now increased to £2780 as at 1 June 2024. The last payment to account was for £100 on 13 October 2023. She understood the Respondent was in employment. He had never given any reason for the non-payment of rent, There had been several attempts to enter into repayment plans, the last one being in January 2024 when the Respondent offered to pay £85 per week towards the arrears, but none had been adhered to. The Tribunal noted pre action letters had been sent to the Respondent to highlight the arrears, encourage the Respondent to enter into an arrangement to clear the arrears and to seek advice.

9. She further submitted that her client owned seven other properties, one of which was also in arrears. The fact that two of her client's properties were in arrears was having an impact on her client. Ms Wooley also submitted that the Respondent lived alone at the Property and that she was not aware of any health issues. She understood the Respondent still lived in the Property.

Reasons for Decision

10. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

11. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).

12. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

13. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the

day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 22 February 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 22 February 2024 by email. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £2780. the monthly rent being £300 with reference to the rent statement to 1 June 2024. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
16. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Applicant's letting agents had sent pre - action letters to the Respondent. The Respondent had not stuck to any repayment arrangements. Arrears were increasing with the last payment being on 13 October 2023. The Tribunal was persuaded by Ms Wooley's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicant had clearly done everything they could to avoid taking action and assist the Respondent. On the other hand, the Respondent did not oppose the application. Mr Hill was in employment. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Wooley, that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.
17. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent was in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

18. The Tribunal granted an order for repossession. 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.

Shirley Evans

27 June 2024

Legal Chair

Date