



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/0792

Re: Property at 18 Barrie Terrace, Ardrossan, North Ayrshire, KA22 8BA (“the Property”)

Parties:

EASTON PROPERTY NEWFIELD LIMITED, 2 Newfield Drive, Dundonald, Kilmarnock, KA2 9EW (“the Applicant”)

Ms Samantha Carruth, 18 Barrie Terrace, Ardrossan, North Ayrshire, KA22 8BA (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 19 February 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12A of Schedule 3 to the 2016 Act, that the tenant has substantial rent arrears.

2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties showing a monthly rent of £435.00 which increased to £450.00;
 - ii) copy Notice to Leave in terms of Ground 12A, of Schedule 3 to the Act dated 15 January 2024;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Ayrshire Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £3,147.42 due and owing at 13 February 2024;
 - v) pre-action requirement letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 8 July 2024 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 5 June 2024.
4. Prior to the CMD, by email of 12 June 2024, the Respondent wrote to the Tribunal to requesting a postponement due to health reasons and advising that she is looking for suitable accommodation. The Applicant opposed the postponement and submitted an updated rent statement showing that arrears of £3,238.17 were now due and owing. The Tribunal considered the request and the opposition to it and determined not to postpone the CMD. The Respondent then advised the Tribunal that she would not attend and that there had been a repair issue with the boiler.

CMD

5. The CMD took place on 8 July 2024 at 10.00 by telephone. The Applicant was represented by Mr. Steven Easton. The Respondent was not present and was not represented. She did not submit written representations.
6. Mr. Easton confirmed that the Applicant sought an eviction Order. He advised that there had been no contact from Respondent.
7. With regard to the circumstances of the Parties, Mr. Easton advised that as far as he is aware the Respondent appears to continue to reside in the Property on her own. She is in receipt of benefits and agreed to Universal Credit making payment direct to the Applicant since July 2023. The Universal Credit payment is around £100.00 less than the rent and does not include payments towards the arrears. Mr. Easton advised that the Respondent is aware that she should be paying the shortfall herself and that his view is that she cannot afford the payments. He explained that the Respondent had intended to take the tenancy jointly with her daughter but that that this arrangement fell through and might be a reason for the underpayment of rent since the tenancy began in October 2020.

8. With regard to contact with the Respondent and the Pre-Action Requirements, Mr. Easton advised that much of this was done informally by email and telephone, and, although the Applicant tried to engage with the Respondent in respect of a payment plan, she did not respond to this. He was aware that the Respondent had advised the Applicant's property manager that she was looking for somewhere else to live.
9. With regard to the repairs, Mr. Easton advised that the Applicant has an online portal for notifying repairs and that a repair to the boiler notified in September 2023 and was attended to within two days as the boiler simply needed to be switched back on, He advised that no other repairs had been notified.
10. With regard to the Applicant, Mr. Easton advised that the Applicant has a portfolio of 16 residential properties and employs a work force to manage the properties. The Applicant relies on the rental income to meet running and salary costs.

Findings in Fact

11. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties commencing on 13 October 2022;
 - ii) The monthly rent is currently £450.00;
 - iii) There are rent arrears of £3,238.17, which amounts to in excess of 7 months' rent;
 - iv) The Respondent has underpaid or failed to pay rent since the start of the tenancy;
 - v) Since July 2023, the Applicant has received direct payment of rent from Universal Credit on behalf of the Respondent;
 - vi) The Universal Credit payments do not meet the full amount of the rent or reduce the arrears;
 - vii) The Respondent personally has not made any payments in respect of rent since June 2023;
 - viii) The Respondent has substantial rent arrears; for three or more consecutive months;
 - ix) The Respondent is not entitled to further benefits to assist with housing costs;
 - x) A valid Notice to Leave was issued by the Applicant to the Respondent;
 - xi) PAR letters were issued on behalf of the Applicant to the Respondent;

- xii) The Applicant has a portfolio of sixteen properties including the Property;
- xiii) The Applicant is a professional landlord with commitments for running costs and staff salaries;
- xiv) The Applicant relies on regular payment of the full rent to meet its financial commitments and
- xv) The Respondent is a single person who lives alone;

Issue for the Tribunal

12. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12A of Schedule 3 to the Act as set out in the Application. Ground 12A states *“(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 (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.”*

Decision and Reasons for Decision

13. The Tribunal had regard to all the information before it and to its Findings in Fact.

14. Having found that the Respondent is in substantial rent arrears, the Tribunal found that the eviction Ground has been met.
15. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
16. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
17. The Tribunal, having found that the Respondent is in receipt of Universal Credit with a housing cost element and is not awaiting any further benefits relating to housing costs, was satisfied the her being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
18. The Tribunal noted that the Applicant had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1st October 2022.
19. The Tribunal then had regard to the circumstances of the Parties.
20. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
21. The Tribunal then looked to balance the rights and interests of both parties.
22. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal accepted that the Applicant is a professional landlord and is entitled to make a profit from its business without subsidy from its directors. The Tribunal had no reason to believe that the Applicant was not a reputable landlord or that the rent charged by Applicant was unreasonably high for the Property. The Tribunal had regard to the fact that the Respondent was not entitled to any further state assistance with payment of the rent, and was not making up the shortfall between the state benefit and the cost of the rent. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.

23. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent is entitled to make an application in terms of Part II of the Housing (Scotland) Act 1987 and so should be able to pursue accommodation or assistance with accommodation suitable for her needs.

24. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction 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.

Karen Moore

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Legal Member/Chair

8 July 2024
Date