



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section <51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/1493

Re: Property at 541 Wellesley Road, Methil, KY8 3PD (“the Property”)

Parties:

Kempton Developments Ltd, Brewlands House, Abbey Road, Dalkeith, EH22 3AD (“the Applicant”)

Ms Catherine Charnick, 541 Wellesley Road, Methil, KY8 3PD (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is a Rule 109 application made on 2nd April 2024. The Applicant is seeking an eviction order under ground 12. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties which commenced on 7th April 2022, a rent statement showing arrears in the sum of £6552.06, a notice to leave served on 4th October 2023 with evidence of service, section 11 notice with evidence of service, pre-action requirement correspondence dated 7th December 2023 and 16th and 26th January 2024 and rent increase notice dated 18th May 2023.
2. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officer on 7th June 2024.
3. By email dated 24th June 2024, the Applicant representative lodged an updated rent statement showing outstanding arrears in the sum of £10,569.06.

Case Management Discussion

1. A Case Management Discussion (“CMD”) took place by telephone conference on 10th July 2024. The Applicant was represented by Mr David Gray, Senior Paralegal, Gilson Gray Solicitors. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
5. Mr Gray moved the Tribunal to grant the order. No rent has been paid since 2nd June 2023 and the arrears are now £11,238.56. The Respondent had been in receipt of Universal Credit, which stopped in October 2023. There has been no communication from the Respondent since that time.
6. Responding to questions from the Tribunal regarding the fact that the notice to leave gave a period of notice in excess of the 28 days required for a ground 12 application, Mr Gray said the notice had been served by the Applicant without any legal input. Mr Gray referred to section 73 of the Act, which provides that an error in the completion of a document to which the section applies, including a notice to leave, does not make the document invalid unless the error materially affects the effect of the document. Mr Gray said there was no prejudice to the Respondent due to the excessive period of notice, as it had allowed her more time before an application was lodged. Mr Gray invited the Tribunal to find the notice to leave was valid.
7. Responding to questions from the Tribunal regarding the Respondent’s circumstances, Mr Gray said the Property is an upper 3-bedroom flat. At the time of commencement of the tenancy, the Respondent had a partner and three children. There may now be a fourth child. The Respondent was not previously in employment, but nothing is known of her current circumstances.
8. Responding to questions from the Tribunal regarding the Applicant’s circumstances, Mr Gray said the Applicant is engaged in residential letting and has 15 properties. Mr Gray provided financial information in respect of the Property and the company. The Property is mortgaged on an interest-only mortgage. The failure of the Respondent to pay the rent has caused issues, as the Applicant has had to divert funds from elsewhere to pay the mortgage and upkeep on the Property.

Findings in Fact and Law

9.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 7th April 2022 with a monthly rent of £650, which was increased to £669.50 from September 2023.

- (ii) The Applicant has served a Notice to Leave upon the Respondent.
- (iii) The Respondent has accrued rent arrears.
- (i) The Respondent has been in rent arrears for three or more consecutive months.
- (ii) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (iii) The Applicant has complied with the pre-action protocol.
- (iv) It is reasonable to grant an eviction order.

Reasons for Decision

10. Section 73 of the Act provides that an error in the completion of a document to which the section applies, including a notice to leave, does not make the document invalid unless the error materially affects the effect of the document. The Tribunal considered the document, and the date inserted at part 3, to be misleading, however, the Tribunal was satisfied that there was no prejudice to the Respondent due to the excessive period of notice, as it had allowed her more time to address the position before an application was lodged. The Tribunal found that the notice to leave was valid.
11. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established. There was no information before the Tribunal to indicate that the Respondent being in rent arrears was as a result of a delay or failure in the payment of a relevant benefit.
12. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
13. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The Respondent has failed to make payment of rent for some time. The arrears are substantial. The Applicant has complied with the pre-action protocol. The Applicant has been affected by the non-payment of rent, as they have had to divert funds from elsewhere within the business to pay the mortgage and upkeep on the Property.
14. There is limited information available about the Respondent's circumstances. The Respondent has chosen not to engage with the Tribunal. The Tribunal considered the fact that an eviction order may render the Respondent and her family homeless, however, there was no evidence from the Respondent as to

her prospects for securing alternative accommodation or, indeed, any representations as to her position in respect of the application.

15. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondent to attend or make representations to put material before the Tribunal to indicate why an order should not be granted, and the Respondent has failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

16. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 14th August 2024.

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.

H Forbes

-

Legal Member/Chair

10th July 2024

Date