



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/24/0980

Re: Property at 18 McKay Court, Leven, KY8 4FU (“the Property”)

Parties:

Kingdom Initiatives Limited, Saltire Centre, Pentland, Glenrothes, KY6 2DA (“the Applicant”)

Ms Bethany Fowler, 18 McKay Court, Leven, KY8 4FU (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (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 18 McKay Court, Leven, KY8 4FU 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 furth 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. By application dated 27 February 2024, the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 30 September 2022, letters to the Respondent dated 23 February 2023, 14 June 2023, 31 January 2024 and 12 February 2024, a Notice to Leave with Sheriff Officer's execution both dated 26 July 2023, a rent statement and an email dated 27 February 2024 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 21 March 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 12 June 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 3 July 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 18 July 2024. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 13 June 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 3 July 2024.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 18 July 2024 by way of teleconference. Ms Callaghan from TC Young, 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 her absence. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/24/0981.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 30 September 2022, letters to the Respondent dated 23 February 2023, 14 June 2023, 31 January 2024 and 12 February 2024, the Notice to Leave with Sheriff Officer's execution both dated 26 July 2023, a rent statement and an email dated 27 February 2024 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.
8. Ms Callaghan moved the Tribunal to grant an order of eviction. Arrears had increased from £4871.12 when the application was submitted and have now increased to £7114.97. Arrears had accrued over a number of years with the last successful direct debit payment being made in August 2023. All subsequent direct debits had been returned. No payments have been made since then.

9. She further submitted that her client had sent a further letter to the Respondent on 13 June 2024 and that they had also carried out a home visit on 25 June 2024. There had been no answer and a card had been left requesting the Respondent call them. The Respondent had however not contacted them. The Housing Officer confirmed with neighbours that the Respondent still lived at the Property. In June 2023 the Respondent met with the Applicant's Money Advice Team. She advised that she earned £660 per month. They had understood she had also applied for Universal Credit which would entitle her to a further £229 per month. They had also advised her to apply for Discretionary Housing Payment. She had agreed to pay £100 per month towards the arrears within two weeks and that she would be back in contact with the Money Advice Team at the end of June 2023. She did not contact them again and no payment towards the arrears was made. The Applicant had applied for an alternative payment arrangement in November 2023 and January 2024, but these had been refused.
10. In response to questioning from the Tribunal, Ms Callaghan advised the Respondent was about 23 years of age and lived alone with no dependents. She submitted that in all the circumstances it was reasonable to evict.

Reasons for Decision

11. 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.
12. 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).
13. 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.
14. 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.
15. 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 28 August 2023.

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 26 July 2023, having been served by Sheriff Officers. 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.

16. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing, and no payment had been made since August 2023. However, Ground 12 is discretionary ground of eviction. The Tribunal found that the Applicant had established a case under Ground 12. 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.
17. The Tribunal noted the pre action requirement letters lodged with the application and accepted Ms Callaghan's submission that the Applicant had sent a further recent letter to the Respondent and had carried out a home visit. The Tribunal gave weight to the submissions that the Respondent's arrears were increasing and despite the pre action requirement letters, receiving money advice and a home visit she had not engaged at all with the Applicant. The Applicant had clearly taken steps to avoid taking action and assist the Respondent. On the other hand, the Respondent did not oppose the application. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Callaghan, that the balance of reasonableness in this case weighted towards the Applicant.
18. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

19. The Tribunal granted an Order of eviction.

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.



Legal Chair

18 July 2024

Date