



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/24/1164

Re: Property at 3B Douglas Bridge House, Channel Street, Galashiels, TD1 1BN (“the Property”)

Parties:

Mr Ewan Gowrie, 1 The Fairways, Cardrona, Peebles, EH45 9NQ (“the Applicant”)

Ms Elaine-Rose McGregor, 3B Douglas Bridge House, Channel Street, Galashiels, TD1 1BN (“the Respondent”)

Tribunal Members:

Alison Kelly (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 the order for eviction should be granted.

Background

1. On 11th March 2024 the Applicant 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 under Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 17th December 2020 and a rent of £300 per month;
 - ii. Copy Notice to Leave dated 6th November 2023;
 - iii. Copy email dated 6th November 2023 to the Respondent serving the Notice to Leave;

- iv. Section 11 Notice and proof of service;
 - v. Rent Statement
3. The Application was served on the Respondent by Sheriff Officers on 27th June 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Janus of Cullen Kilshaw, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Mr Janus sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that at the time the application was made the rent arrears were £2810, and as at today’s date they were £4310. This equates to 14 months’ missed rental payments.
7. The Tribunal were satisfied that the ground had been established and asked to address the Tribunal on reasonableness. Mr Janus said that the Respondent has not paid any rent since 20th February 2024. It is understood that she receives housing benefit, but that it is paid direct to her and she does not pay it to the landlord. She lives alone in the property. He said that the information required by the pre action protocol was sent to the respondent with the Notice to Leave.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 17th December 2020;
- c. The monthly rent was £300;
- d. A Notice To Leave, dated 6th November 2023, was served timeously and correctly;
- e. A section 11 notice was served on the local authority;
- f. The Application was served on the Respondent by Sheriff Officer on 27th June 2024;
- g. Arrears at the date the Notice to Leave was served were £2150, equating to seven months’ missed payments;
- h. The arrears as at today’s date amount to £4310, which equates to 14 months’ missed payments;
- i. The Respondent is receiving housing benefit but not paying it to the Applicant;
- j. The Respondent lives alone in the property.

Reasons for Decision

8. Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 was introduced by the Cost of Living (Tenant Protection)(Scotland) Act 2022 and states as follows:

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.

9. The Tribunal were satisfied that the Respondent had a level of arrears which satisfied the Ground. The Respondent has been paid housing benefit but has not passed it on to the Respondent. The Tribunal considered in those circumstances that it was reasonable to grant the order, and also that the level of the arrears in and of itself 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.

A. Kelly

02/08/2024

Legal Member/Chair

Date