



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 (Act)

Chamber Ref: FTS/HPC/EV/24/1034

Re: Property at 18 Balfour Place, Carnoustie, DD7 7AH (“the Property”)

Parties:

Mrs Jane Waddell, 77 Carlogie Road, Carnoustie, Angus, DD7 6EX (“the Applicant”)

Mr Lemmy Milne, 18 Balfour Place, Carnoustie, DD7 7AH (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Grounds 12 and 12A of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 2 December 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 February 2023;
3. Pre-Action Requirements correspondence;
4. Notice to Leave dated and served by email on 19 January 2024;
5. Section 11 Notice to Local Authority and covering email dated 1 March 2024;
6. Rent Arrears Statement as at 1 March 2024;
7. Service of Tribunal CMD Notification on the Respondent by Sheriff Officer on 5 July 2024.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 13 August 2024. The Applicant participated. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but they did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Applicant provided information regarding the Applicant's personal circumstances and some limited information regarding the Respondent.

The Tribunal had regard to Grounds 12 and 12A of Schedule 3 to the Act which provide:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 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.

And

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).

The Tribunal then considered the oral and documentary evidence it had received. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 1 February 2023;
2. The monthly rent was £510;
3. Notice to Leave had been served on the Respondent on 19 January 2024;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of service of the Notice to Leave the Respondent was in arrears of rent to an amount that exceeded 6 months' rent;
6. As at the date of the CMD the Respondent was £8,880 in arrears;
7. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
8. Section 11 notification had been served on the local authority;
9. The Respondent lived in the Property with his girlfriend and appeared to be in employment. He had agreed an arrears repayment plan which had not been adhered to.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought.

The Tribunal sought to make a fair and just decision. The Tribunal determined that it would be reasonable to grant the order in the circumstances given the amount of arrears, the fact that the Respondent was not paying any rent and was in employment.

The Tribunal was satisfied that Grounds 12 and 12A had been established and accordingly granted the application for eviction and recovery of possession.

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.

Alan Strain

13 August 2024

Legal Member/Chair

Date