



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

Chamber Ref: FTS/HPC/EV/23/4149

Property at Rowanhill, Lentrán, Inverness, IV3 8RJ (“the Property”)

Parties:

Mr Michael Blackburn, Unit 304e One Rockwell East Tower, Rockwell Centre, Makati City, Metro Manila, 1200, Philippines (“the Applicant”)

Mr Andrew Kieltyka, Rowanhill, Lentrán, Inverness, IV3 8RJ, Mrs Susan Kieltyka, 33 Bailey Place, Inverness, IV2 6FR (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Grounds 1 and 12 of schedule 3 of the 2016 Act. A copy of the application was served on the Respondents and the parties were advised that a CMD would take place on 21 March 2024 at 2pm. Prior to the CMD the Applicant lodged submissions and documents.
2. The CMD took place on 21 March 2024. The Applicant was represented by Mrs Cochrane. The First Respondent participated. The Second Respondent did not participate and was not represented.

Summary of Discussion at CMD on 21 March 2024

3. The Tribunal noted that the documents lodged with the application included a letter from Walker Love, Sheriff Officers, in relation to service of the Notice to

leave. Although they served the Notice at the property address in relation to both Respondents, the letter states that they were told by Mr Kieltyka that Mrs Kieltyka has not resided at the property for three years, that she was in hospital following a stroke and that he did not intend to give her the notice. The Tribunal noted that the Notice to leave had also been served by email on the second Respondent, as stipulated in the tenancy agreement. However, the Tribunal had only served the applications at the property address because the application form indicated that both Respondents were resident there. Mr Kieltyka said that he has an address for the joint Respondent. She moved out of the property three years ago and he notified the letting agent at the time. He stated that he has been responsible for the rent and the tenancy since that date. Mrs Kieltyka was in hospital last year for several months. She now has her own accommodation although he was not willing to provide the address, as he did not want the applications to be served on her. The parties were advised that the Applicant would be given 14 days to obtain an address and that Mr Kieltyka would have the same period to decide if he was willing to provide her address. If obtained, the applications would be served at that address. Otherwise, they would be served by advertisement on the Tribunal website and a further CMD will be arranged.

4. Mr Kieltyka said that he accepts the rent arrears are due. He said that his circumstances changed last year when he was made redundant. He has obtained advice from the CAB and is in receipt of universal credit. However, it does not cover his rent. He applied for a grant, but it was refused because the tenancy is not sustainable. However, he will be homeless if he moves out and has only made some initial enquiries with the Local Authority. He told the Tribunal that he intends to take advice on the applications.
5. Mrs Cochrane told the Tribunal that she would endeavour to obtain an address for Mrs Kieltyka. The Tribunal noted that the application refers to ground 12A. The Notice to leave refers to grounds 1 and 12. Following discussion, Mrs Cochrane stated that she wished to amend the application and to proceed on grounds 1 and 12 and not 12A. The Tribunal allowed the amendment.
6. The parties were notified that the applications would proceed to a further CMD and that the papers will either be served on the Second Respondent at her new address or by advertisement if a new address cannot be obtained by the Applicant and is not provided by the first Respondent.
7. The parties were notified that a further CMD would take place by telephone conference call on 8 August 2024 at 10am. The Applicant provided the Tribunal with an address for the second Respondent and the application was served on her by Sheriff officer at this address. Prior to the CMD the Applicant lodged an updated rent statement.
8. The CMD took place on 8 August 2024. The Applicant was represented by Ms Cochrane. The first Respondent participated, joining the call late. The second Respondent did not participate

CMD on 8 August 2024

9. Before Mr Kieltyka joined the call, Ms Cochrane told the Tribunal that Mr Kieltyka recently told her that he is still at the property although he previously said that he was not living there. She said that an engineer had attended to service the boiler but there was no oil in the boiler. However, it appears that he is there some of the time. Ms Cochrane referred to the updated rent statement and confirmed that this sum is still outstanding. She also stated that the Applicant's position is unchanged, that he is keen to return to the UK as soon as possible, to sell the property and purchase a family home. His employment in the Philippines ended on 25 July 2024. She said that the property is a three-bedroom house, and that Mr Kieltyka lives there alone.
10. Mr Kieltyka joined the call at 10.15 and was advised of the discussions that had already taken place. He told the Tribunal that he has spoken with the second Respondent. She is unable to communicate verbally due to a stroke. She has an appointment with the CAB about the related payment application because she moved out of the property some years ago and should not be liable for the rent. She has no interest in the eviction application. She has her own accommodation and was placed there by Social Work. The Respondents tried to have her taken off the lease, but the agent told them it wasn't necessary. Mr Kieltyka said that he had received the updated rent statement, and it appears to be in order. He has no objection to a payment order being granted against him for this sum as it is due, and he wishes to make repayment arrangements when he has moved out of the house.
11. In response to questions about whether he wishes to oppose the application for an eviction order, Mr Kieltyka said that he is concerned about becoming homeless. However, he does not want to stay in the house. It is damp and he could not stay there during the winter, due to health issues. Recently he has mostly been staying with family and friends. He has an appointment with the Council. He missed a previous appointment because he was ill. He doesn't want to stop the Applicant selling the house but is concerned about where he will go. But he does not want to continue to live at the property. He has the option of moving into a friend's house and will probably do that shortly. He previously had a good job and could afford the rent but can't do so now that he is retired. He now only has his state pension, a small private pension and housing benefit. He is not entitled to any other benefits

Findings in Fact

12. The Applicant is the owner and landlord of the property.
13. The Respondents are the tenant of the property in terms of a private residential tenancy agreement.

14. The Respondent's are due to pay rent at the rate of £875 per month.
15. The Respondents have been in arrears of rent since November 2022.
16. Part of the rent is being met by housing benefit but there is a shortfall of £445.64 per month. No payments are being made to the shortfall.
17. The Respondents have made no additional payments to reduce the arrears.
18. The Respondents currently owes the sum of £7738.02 in unpaid rent.
19. The Second Respondent does not reside at the property and has her own accommodation.
20. The Applicant served Notices to leave on the Respondents on 21 July 2023.
21. The Applicant has issued information to the Respondents in compliance with the Rent Arrears Pre action Protocol.
22. The rent arrears are not due to a delay or failure in the payment of a relevant benefit.
23. The Applicant intends to sell the property to purchase a family home for himself, his wife and two children.
24. The first Respondent does not reside on a full-time basis at the property

Reasons for Decision

25. The application was submitted with Notices to Leave dated 21 July 2023, together with a copy of an email and Sheriff Officer certificates of service which establishes that the Notices were served on both Respondents. The Notices states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months and ground 1, landlord intends to sell the let property.
26. The application to the Tribunal was made after expiry of the notice periods. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
27. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

28. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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.”
29. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) 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, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
30. Ground 1 of schedule 3 (as amended) states, “ (1) It is an eviction ground that the landlord intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord – (a) is entitled to sell the let property, (b) intends to sell it for market value or at least put it up for sale within 3 months of the tenant ceasing to occupy it, and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”
31. From the documents submitted and the information provided at the CMDs, the Tribunal is satisfied that the Respondents currently owe the sum of £7738.02 and that they have been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Ground 12 is therefore established.
32. From the documents submitted and the information provided at the CMDs, the Tribunal is also satisfied that the Applicant intends to sell the property and that ground 1 is also established.
33. The Tribunal proceeded to consider whether it would be reasonable to grant the order on grounds 12 and 1 and noted the following: -
- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted a copy of a letter to the Respondents which provided the information required in terms of the protocol.
 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The First Respondent is in receipt of pension income and housing benefit. He has taken advice and has established that he is not entitled to any additional benefits. As he resides at the property alone, and there are three bedrooms, his housing

benefit does not cover the whole rent charge.

- (c) The arrears are substantial. Less than half is covered by the housing benefit payments and the first Respondent is making not additional payments to cover the shortfall or reduce the arrears . The property is not affordable as the first Respondent is retired and his income has reduced.
- (d) The first Respondent does not wish to continue to live at the property. He hopes to be allocated alternative accommodation by the Local Authority and intends to move in with a friend on a temporary basis until this occurs.
- (e) The Second Respondent has her own, separate accommodation and no longer lives at the property. She did not participate in the CMD or notify the Tribunal that the application is opposed.
- (f) The Applicant currently lives in the Philippines with his wife and two young children. His contract of employment ended on 25 July 2024. He requires to sell the property to purchase a suitable family home so that they can return to reside in Scotland. He does not own any other rental properties.

34. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that grounds 1 and 12 have been established. For the reasons outlined in paragraph 33, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

35. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

8 August 2024