



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/0804

Re: Property at 23 Gateside Crescent, Airdrie, North Lanarkshire, ML6 6NH (“the Property”)

Parties:

Craig Morrison as Trustee in Sequestration of Lendrick Michael Gillies, Quantuma Advisory Limited, Turnberry House, 175 West George Street (3rd Floor), Glasgow, G2 2LB (“the Applicant”)

Ms Robina Blair, 23 Gateside Crescent, Airdrie, North Lanarkshire, ML6 6NH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application lodged on 19 February 2024, the former Applicant, Lendrick Michael Gillies (Gillies Properties), now sequestered, applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act (rent arrears for three or more consecutive months). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness

(Scotland) Act 2003 and a Rent Statement showing the balance of rent arrears owing as at December 2023 of £4,542.01.

2. Following initial procedure, on 11 April 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 22 July 2024, Sheriff Officers served a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 22 August 2024. Written representations were to be lodged by 9 August 2024. No written representations were submitted by the Respondent.
4. On 12 August 2024, the Applicant’s agent emailed the Tribunal to advise of a change in the circumstances of the Applicant, namely that that the Applicant had been sequestrated on 11 June 2024 and that Mr Craig Morrison of Quantuma Advisory Ltd had been appointed as his Trustee in Sequestration. A copy of the award of Sequestration was produced, together with a mandate authorising the former Applicant’s agent to continue acting in relation to this application for an eviction order which Mr Morrison confirmed was to continue to its conclusion. In terms of Rules 31 (*Death, insolvency or incapacity of a party*) and 32 (*Addition, substitution and removal of parties*) of the Regulations, the Tribunal amended the Applicant by substituting Mr Morrison, Trustee in Sequestration for the original Applicant, Mr Gillies (Gillies Properties) in view of the change in circumstances of Mr Gillies since the start of these proceedings.

Case Management Discussion

5. The CMD took place on 22 August 2024 at 2pm. The 9 May 2024 at 10am by telephone conference call. The Applicant was represented by Mr Paul Clark of Aquila Management Services. The respondent, Ms Robina Blair, was also in attendance.
6. After introductions and introductory remarks by the Legal Member, Ms Blair was asked to confirm her position in relation to the eviction application. She confirmed that she was not opposed to it. She had been in contact with Glasgow City Council’s homelessness section to apply for accommodation. She has been informed that her application will not be progressed until an eviction order is granted.
7. Mr Clark was asked to address the application and confirm the Applicant’s position. He confirmed that the original Applicant, Mr Gillies of Gillies Properties had started off the process of eviction, prior to him being sequestrated and that the Trustee in Sequestration wishes to continue with the eviction as it is intended that this property be sold to recover proceeds for Mr Gillies’ creditors. It is not anticipated that this property would be recovered by the Trustee and then let out again, or sold to another landlord. This is due to it being uneconomic to do so, given the fairly low rent it would likely bring in. Mr Gillies had not put

the rent up much over the years and had been suffering financial hardship prior to being sequestrated. The eviction ground was rent arrears and the rent arrears currently amount to £4,347.99. There was a long background of rent arrears with this tenancy and, although monthly payments were still coming in, they were insufficient to cover the rent. Ms Blair had been in occupation since 1 December 2019 under a Private Residential Tenancy. It was noted by the Tribunal that the PRT produced commenced on 1 June 2022. Mr Clark explained that they took over managing this tenancy from the previous letting agents, Gilson Gray in 2022 at which time the arrears already amounted to around £2,700. Mr Clark confirmed that they had had discussions with Ms Blair concerning the rent arrears and issued the usual letters in respect of the pre-action requirements but, unfortunately she simply cannot afford to stay in the property and the arrears have continued to accrue.

8. Ms Blair confirmed that she is in receipt of Jobseekers Allowance and that the amount paid by her benefits towards the rent does not cover the rent payments. She is due to move over to Universal Credit in October 2024. She lives alone with her cat and she confirmed that the tenancy has not been specially adapted for her needs. She did not have anything else that she wished to add.
9. In the circumstances, the Tribunal decided that it was reasonable to grant the order on the eviction ground sought and confirmed that the decision would be issued shortly in writing. Ms Blair was urged to provide a copy of the decision to the local authority as soon as possible, so that her housing application could be progressed. It was explained that there is a 30 day appeal period, following which the order would be issued to the Applicant's agent. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the Trustee in Sequestration of the former owner and landlord of the Property, which is now vested in the Trustee in terms of an Award of Sequestration granted on 11 June 2024.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 June 2022 but had occupied the Property under a former tenancy since on or around 1 December 2019.
3. The rent in terms of the PRT was originally £450 per calendar month but was subsequently increased to £463.50 per month.
4. The Respondent had a history of rent arrears which already amounted to around £2,700 when the Applicant's current letting agent took over management of the Property around 24 January 2022.
5. The Respondent is in receipt of benefits which do not cover the monthly rental payments and she cannot afford to make up the shortfall every month.

6. The rent account has been continuously in arrears since around 1 January 2020.
7. When the Notice to Leave was served, the rent account had been in arrears for more than 3 consecutive months.
8. Rent arrears currently amount to £4,347.
9. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was sent to the Respondent by email on 12 December 2023.
10. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 12 January 2024.
11. The Tribunal Application was submitted on 19 February 2024.
12. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
13. The Respondent does not oppose the eviction.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral representations made by the Applicant’s agent and the Respondent at the CMD.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) as follows:-

“Rent arrears

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

(2).

(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—

(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 Ministers in regulations.

(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.

(6)Regulations under sub-paragraph (4)(b) may make provision about—

(a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b)steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c)such other matters as the Scottish Ministers consider appropriate.”

The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances, as outlined above, to grant the eviction order sought. The rent account had been continuously in arrears throughout most of the tenancy, since early 2020 and the current arrears are significant, amounting to £4,347.99. The Tribunal was satisfied that the Applicant requires to recover the Property and sell it, in his role as Trustee in Sequestration of the former owner and landlord, who had been in financial

difficulty, to recover the net sale proceeds for the benefit of creditors. The Applicant's agent had followed the pre-action protocol by issuing letters to the Respondent and they had also sought to engage with her to try and resolve the rent arrears. The rent arrears were not a consequence of a delay or failure in the payment of a relevant benefit. Unfortunately, there was a shortfall between the benefits payments made towards the rent every month and the Respondent was unable to afford the shortfall. In any event, the Respondent did not oppose the eviction order being granted. She indicated that she had already made application to the local authority for alternative housing and has been told to provide them with a copy of the eviction order which should progress her application. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N.Weir

Legal Member

– 22 August 2024
Date