



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

Chamber Ref: FTS/HPC/EV/24/0748

Re: Property at Flat 2/1, 67 Onslow Road, Clydebank, G81 2PN (“the Property”)

Parties:

Palestrina Properties Ltd, 15 Richmond Drive, Cambuslang, Glasgow, G72 8BH (“the Applicant”)

Ms Gayle Doran, Miss Hanna Higgins, Mr Jordan Higgins, Flat 2/1, 67 Onslow Road, Clydebank, G81 2PN (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenants have accrued rent arrears in respect of one or more periods, the cumulative amount of the rent arrears exceeds the equivalent of six months rent in terms of the tenancy agreement when Notice to Leave was given to the tenants on this ground and the Tribunal consider it is reasonable to issue an eviction order. The Tribunal refused to grant an order for eviction under Ground 1 of the 2016 Act.

Background

1. This application for an eviction order in terms of Rule 109 of the Tribunal Rules of procedure was first lodged with the Tribunal on 14th February 2024 along with a related application for a payment order with reference FTS.HPC.CV.24.0757. This application was accepted by the Tribunal on 16th April 2024. A case management discussion was fixed for both applications for 16th August 2024 at 10am.

The Case Management Discussion

2.The case management discussion was attended by Mr Noel and Mrs Johnson joint owners of the property and co-directors of the Applicant company landlord. There was no appearance by or on behalf the Respondents. The Tribunal had sight of an execution of service of the applications, supporting papers and the date of the case management discussion which had been served on the Respondents by sheriff officer putting these through the letterbox at the property on 15th July 2024, having established that they still resided at the property. The Tribunal was satisfied that fair notice had been given to the Respondents of the applications and the date of the case management discussion and that it was appropriate to proceed in their absence.

3.The Tribunal had sight of the Application, the tenancy agreement, Notices to Leave together with proof of delivery of the notices, emails from Mr Noel to the tenants in relation to outstanding rent signposting them to sources of advice and assistance, a rent statement, a further rent statement updated to July 2024, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, e mail confirmation of receipt of the section 11 Notice and an email exchange between Mr Noel and a solicitor.

4.Mr Noel was seeking an eviction order in terms of Grounds 1 and 12 A of the Private Housing (Tenancies) (Scotland) Act 2016.The landlord company had entered into a tenancy agreement with the three tenants, Ms Doran and her two adult children with effect from 1st March 2021 with rent payable four weekly in advance of £500.Mr Noel advised the Tribunal that he had not known the tenants directly when the flat was first rented out to them but he had known the sister of Ms Doran. She had lived opposite the property and had spoken to him when he was renovating the property. He was also aware that the person who carried out gas certification for him was seeing Ms Doran's daughter. He was also aware that her son, the third tenant was doing an apprenticeship.

5.Mr Noel advised that there had been issues with the rent from the start of the tenancy and at first, he had believed that there had been an issue in transferring universal credit from the council to the tenant but this turned out not to be the case and Mr Noel understood that universal credit had stopped paying the full rent, perhaps because Ms Doran was working. He had tried to keep in touch with the tenants and at one stage there was a payment plan in place to pay off £100 per month around August 2023 but this was not successful. Mr Noel was of the view that once the arrears reached a certain point Ms Doran had considered that it was pointless trying to pay off the arrears. When the Notice to Leave was served in September 2023 the rent arrears had reached £4236.41, in excess of 6 months' rent.

6.Only one rent payment had been made since August 2023 and no universal credit payments had been received towards payment of the rent since June 2023.

The rent arrears as at the date of the case management discussion had reached £10236.41 which in terms of the rent due per month (£541.66 per month) amounted to rent arrears of over 18 months' rent. The last contact Mr Noel had had with Ms Doran was at the start of June 2024. Throughout the tenancy, in 2021, 2022 and 2023 he had emailed her regarding the rent arrears signposting her to sources of support and assistance.

7.Mr Noel was of the view that the Respondents may no longer be living at the property. He had tried to make contact with the Respondents and had spoken to the neighbours who said that they had not seen Ms Doran since May of 2024. He had gone to the property to try to speak to them regarding the arrears and had seen through the letterbox that there were belongings everywhere and a glass panel in the front door was smashed and had been covered by plywood. Mr Noel had received no contact to say that they had moved out at all and had not received the keys back. He was aware that the last top up for the gas and electricity had been on 13th May 2024.

8.A Notice to Leave setting out eviction grounds in terms of both Ground1 and Ground 12A of Schedule 3 of the 2016 Act had been served on the tenants by sheriff officer by depositing these notices at the property on 20th September 2023.The Notice to Leave indicated that no application would be made to the Tribunal for an eviction order before 14th December 2023.

9.A notice in terms of section 1 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in relation to this application on 8th February 2024 and the local authority acknowledged receipt of the notice.

10.Mr Noel explained that he and his wife wanted to sell the property. He said that they were small time landlords whose company had 8 properties in their portfolio. He and his wife individually had another two rented properties between them. He was retired and Mrs Johnston was working part time but they had no other business interests. The plan was to sell this property but keep the others. They needed to consider that the mortgages on some of their properties had been taken out 2 or 3 years before and these were about to renew with rates expected to be double what they had been before. Their daughter was going to university and they were hoping to have some money at this time from the sale. Mr Noel also indicated that he had solicitors' fees to pay which would be taken from the money generated from the sale and he would live off the rest of the proceeds.

11.The Tribunal Legal Member asked Mr Noel regarding the email exchange with a solicitor in February 2024 which had been lodged with the Tribunal. This did not appear to be a letter of engagement setting out the business relationship between the parties but a confirmation from the solicitor that he would be happy to act in any sale of the property.

12.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

13.The parties entered in to a private residential tenancy at the property with effect from 1st March 2021.

14. The rent was payable four weekly in advance at the rate of £500 which is the equivalent of rent payments of £541.66 per month.

15. The rent was initially paid by universal credit in full but this stopped and only partial payment of rent was then made by universal credit.

16. As of 20th September 2023, when a Notice to Leave was served on the Respondents 2023 rent arrears had reached the sum of £4236.41.

17. Only one payment of rent has been made since August 2023 and no universal credit payments have been made towards rent payments since June 2023.

18. A director of the Applicant company has attempted to keep in contact with the tenants by email regarding the rent arrears and in 2021, 2022 and 2023 sent pre action protocol emails to the first named tenant signposting her to sources of support if she was in financial difficulty.

19. Attempts were made to agree a payment plan for the rent arrears in August 2023 but this was not successful.

20. As of 16th August 2024, rent arrears in terms of the tenancy agreement have reached £10,226.41.

21. There is no information to suggest that the rent arrears have accrued as a result of any delay or failure in relation to payment of a relevant benefit.

22. A Notice to Leave in proper form setting out eviction grounds 1 and 12A was served on the Respondents by Sheriff officer on 20th September 2023 and this notice indicated that no application would be made to the Tribunal before 14th December 2023.

23. A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in relation to this application on 8th February 2024.

24. The Respondents still have belongings at the property and have not returned the keys to the property or indicated that they are moving out.

25. The Respondents have not been seen at the property by neighbours since May 2024.

26. The Applicant company has a portfolio of 8 rented properties.

27. The Applicant company has mortgages on some of its properties which are due to be renewed at higher interest rates in the near future.

28. The Applicants are considering selling this property to make use of the income which a sale would provide.

29. A director of the Applicant company contacted a solicitor in February 2024 and the solicitor has indicated that they will assist with a sale of the property.

Reasons for Decision

30. The Tribunal was satisfied that eviction ground 12A was made out and that there are substantial rent arrears accrued at the property. The Tribunal was not satisfied that there was sufficient information before it to find that the requirements of Ground 1 of 2016 Act were satisfied and considered that the evidence from the solicitor was insufficient to show the objective intention to sell within the required timeframe and did not amount to a letter of engagement. For this reason, the Tribunal refused an eviction order in terms of Ground 1. The Tribunal was satisfied that it was reasonable to grant an order under Ground 12A given the level of arrears and the failure of the Respondents to engage with payment plans or to set out their position and indeed to engage with the Tribunal at any stage.

Decision

The Tribunal granted an eviction order in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenants have accrued rent arrears in respect of one or more periods, the cumulative amount of the rent arrears exceeds the equivalent of six months rent in terms of the tenancy agreement when Notice to Leave was given to the tenants on this ground and the Tribunal considers it is reasonable to issue an eviction order. The Tribunal refused to grant an order for eviction under Ground 1 of the 2016 Act.

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.

Valerie Bremner

16/8/24

Legal Member/Chair

Date