



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/23/3802

Re: Property at 41 3/1 Causeyside Street, Paisley, PA1 1YL (“the Property”)

Parties:

Mr Mohammad Ashraf, 24 Glamis Avenue, Elderslie, PA5 9NR (“the Applicant”)

Mr Colin Hope, 41 3/1 Causeyside Street, Paisley, PA1 1YL (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable in all the circumstances to grant an eviction order in terms of grounds 12 and 12A of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

- Background

By application dated 26 October 2023 (the Application), the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). With the Application, the Applicant, lodged the following:

- 1) Lease which commenced on 1 August 2020;
- 2) Copy Notice to Leave along with sheriff officer execution of service;
- 3) Section 11 Notice;
- 4) Rent Statement; and
- 5) Pre-action correspondence.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed initially for 22 March 2024. Following an email dated 7 February 2024 from the Applicant’s representatives, it was suggested that the Respondent may not be at

the Property anymore. That CMD was cancelled, and a new date fixed in lieu being 7 June 2024 to be heard by way of conference call. Following sheriff officer attendance at the address provided by Applicant's representative, tribunal administration received a call from an individual purporting to be the Respondent's father on or around 14 May 2024 who stated that the Respondent did not live there and that he resided at the Property. Prior to the CMD on 7 June 2024, further written representations were received from the Applicant's representatives regarding the condition of the Property. At the CMD on 7 June 2024, the Applicant was represented by a Jennifer Cochran of Cochran Dickie Solicitors, but there was no appearance by the Respondent. As there was a concern that the Respondent had not received notice of the Application and, more particularly, the date of the CMD on 7 June 2024, the CMD was continued 12 September 2024 to allow service of the Application on the Respondent.

- The Case Management Discussion

At the CMD on 12 September 2024, the Applicant was again represented by Mrs Cochrane of Cochrane Dickie Solicitors. The Respondent did not appear and was not represented. Notwithstanding, the Tribunal was of the view that he was aware of the CMD and his requirement to attend and that if he failed to do so, the Application could be dealt with in his absence. Mrs Cochrane confirmed that the current arrears were £9,060 based on monthly rental payments of £400 and that the Respondent first fell into arrears on or around September 2021 and although there were some "sporadic" payments by the Respondent between January 2022 and July 2023, the Respondent remained consistently in arrears from that date. She also confirmed that no payment of rent has been made by the Respondent since July 2023. Mrs Cochrane stated that despite various attempts by the Applicant to contact the Respondent, there has been no dialogue regarding the arrears and no explanation as to why they occurred. Mrs Cochrane stated that the Respondent lived alone at the Property, and it was understood that the Respondent was in employment at a butcher's shop (which is below the Property) although it was not clear whether he was actually attending work at present. It was suggested that the Respondent may be "an alcoholic" who was "not dealing with it" (his alcoholism). Mrs Cochrane explained that the Respondent was frustrating access to the Property for the purpose of inspection and for things like gas safety certificates and simply refuses to respond to letters, texts and any attempts to communicate with him. Mrs Cochrane then went on to explain that the Applicant is retired and is now due in excess of £9,000 by way of rent arrears, whilst still paying insurance and factoring costs for the Property. She explained that one of the Applicant's main concerns related to the condition of the Property and how it may affect neighbouring proprietors especially from a fire safety perspective. Mrs Cochrane was asked about compliance with the Pre-action Requirements. She stated that the only correspondence that was lodged with the Application were the letters dated 2 April 2020, 23 April 2023 and 13 July 2023, the terms of which were referred to. She did confirm that no further copy of the tenancy agreement had been sent to the Respondent as part of that.

- Findings in Fact and Law

- 1) That the Applicant is the heritable proprietor of the Property.

- 2) That the Applicant and Respondent, entered into a tenancy for the Property which commenced on 1 August 2020.
- 3) The monthly rent was £400.
- 4) By Notice to Leave dated 19 September 2023 intimated by way of sheriff officers the Applicant gave notice to the Respondent of their intention to recover possession of the Property in terms of Grounds 12 and 12A of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 18 October 2023.
- 5) That, as at 19 September 2023, the Respondent was in arrears of rent to the extent of £3,950, which amounted to more than 6 months total rent arrears.
- 6) That the Respondent had been in at least some rent arrears since September 2021 which is a period of at least 3 consecutive months.
- 7) That, as at 12 September 2024, the arrears have risen to £9,060.
- 8) That the Applicant has sought to engage with the Respondent to address his arrears.
- 9) That, the Respondent has not responded to any attempts at contact.
- 10) That the Respondent has not allowed access to the Property for the purpose of inspection and safety certification such as Gas Safety.
- 11) That attempts to engage with the Respondent included the letters dated 2 April 2020, 23 April 2023 and 13 July 2023 which included details of the rent, the level of rent arrears. The letter dated 23 April 2023.
- 12) The Notice to Leave dated 19 September 2023 was in the prescribed format.
- 13) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Grounds 12 and 12A of Schedule 3 have been made out.

- Reasons for Decision

The Applicant has have complied with the notice requirements under the 2016 Act. Standing the level of arrears as at 19 September 2023 they were “substantial” and had been in place for not less than 3 consecutive months. The requirements of Grounds 12 and 12A of Schedule 3 were therefore made out. The only issue remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. Having heard Mrs Cochrane and having considered the relevant circumstances before them, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. Whilst there was no appearance by or on behalf of the Respondent, the Tribunal did seek information from Mrs Cochrane about his circumstances as well as any relating to the Applicant. It was noted that the Respondent lives alone at the Property and appeared to be in employment. It was also noted that there was no suggestion of an entitlement to any form of benefits that might assist with payment of his rent. The arrears are substantial and continue to accrue. It appeared from the rental statements that the Respondent has made little or no attempt to pay his rent for some time and the last payment was made in July 2023, approximately 1 year ago, although there have been persistent arrears since September 2021. It was also noted that the Respondent has failed to engage of respond to attempts to contact him regarding the Property and the arrears of rent. It was noted that the Applicant has concerns regarding the Property and its condition, not only in relation to matters such as safety certificates, but the associated risk to neighbouring properties as a result. The main factors that weighed against the

Respondent were the scale of the arrears, that they continue to accrue and that there have been persistent arrears for a number of years.

The Tribunal also considered the terms of the letters issued to the Respondent. None of them were in the form of the template letters produced by the Scottish Government. However, the letter of 23 April 2023 did advise of the monthly rent, it did specify the arrears at that stage, provide some information as to tenant's rights in relation to possession proceedings and how to access support. Whilst it was noted the template letter had not been used, there was no requirement to do so. The Tribunal thereafter considered the terms of the correspondence letter dated 11/1/23 and its enclosures and determined that, there had, at very least, been some compliance with the pre-action requirements.

- Decision

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.

Rory Cowan

Legal Member/Chair

12 September 2024
Date
