



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/24/0540

Re: Property at 170 Dunbeth Road, Coatbridge, ML5 3JW (“the Property”)

Parties:

Janine Clark, Flat 1/3, 83 Gartloch Avenue, Gartloch, Glasgow (“the Applicant”)

Gary Veldon, 170 Dunbeth Road, Coatbridge, ML5 3JW (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 12 March 2021.
2. The application was dated 30 January 2024 and lodged with the Tribunal on that date. This made the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022* though that Act has now expired. As eviction is sought under Ground 12A the saving provisions for 2022 Act (under regulation 3 of *The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024*) allow us still to consider that ground for eviction, though otherwise no longer in force. There are no additional material requirements under that Act in regard to how Ground 12A operates.

3. The application relied upon a Notice to Leave dated 8 November 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by both recorded delivery and by email (to the email address within the Tenancy Agreement) on the same date. The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has substantial rent arrears” and stating that arrears were £8,100. A statement was said to have been sent with the Notice but in any event the Notice set out the arrears from June 2022 to November 2023 and stated no payment of rent had been made since May 2023, on a Tenancy with a rent of £450 per month. The rent stated in the Tenancy Agreement lodged was £450 a month, meaning the arrears of £8,100 as at the date of the Notice to Leave were said to be 18 months of arrears. (We believe that this was incorrect, as discussed below.) The Notice intimated that an application to the Tribunal would not be made before 8 November 2023. The application papers further included a statement of arrears to 11 January 2024 totalling £8,550.
4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon North Lanarkshire Council on 30 April 2024 was provided with the application. There was further evidence of the Applicant providing pre-action protocol information in standard form to the Respondent on 17, 24 and 31 October 2023 by recorded delivery letter.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 21 August 2024 at 14:00. We were addressed by the Applicant, who at times was assisted by her partner, Jason Gillan. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (nor on his behalf) with the Tribunal. The Applicant stated that there had been no material contact from the Respondent on the matter of arrears. He had declined to provide a mobile telephone number to her. The Applicant was aware that the Respondent was assisted both by the local authority and an adviser at the CAB. Contact had been recently received from the CAB adviser but not with any material proposal regarding the eviction or arrears. (The call related to the Respondent’s concerns about rehousing his dog, and the Applicant believed the adviser had contacted her because she is a veterinary nurse and thus may have been able to advise on animal welfare matters.)
7. The Applicant and her partner further explained that they had carried out a maintenance inspection around 2-3 months ago. This had been arranged through the CAB adviser, as the Respondent had originally ignored an appointment set for the inspection. During the inspection, the Respondent had been present with a friend, and had expressed to the Applicant and her partner that he was not going to communicate with them directly, further to advice he had received.

8. Finally, the Applicant stated that she had raised a separate application under Rule 111 for arrears up to the point of the application (of around £10,000) and no proposal had been received since an order had been granted in that application. The Applicant had thus stopped expecting contact from the Respondent.
9. We considered all these matters and further considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 14:05, we were satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
10. At the CMD, the Applicant confirmed that the application for eviction was still insisted upon. She stated that no payments of rent had been received from the Respondent, but since July she had been successful in having Universal Credit payments of £440 per month paid to her direct. She had received £440 on 17 July and 17 August 2024. The arrears had thus increased from £8,550 due for rent to 11 January 2024 up to a sum of £11,270 for rent due through to 11 September 2024. There was now over 25 months of arrears due.
11. In regard to benefits, the Applicant was now aware of Universal Credit being paid to the Respondent, and believed that he had previously been in receipt of Housing Benefit but received it direct and had not paid it to her for rent. She believed at some point the Respondent had been working for a property factor. She gave no submissions on his current employment, and was not aware of any delay arising in his benefit payments, though she believed he may have previously received a sanction in regard to his benefits situation.
12. The Applicant provided the following further information relevant to a consideration of reasonableness:
 - a. The Property was a one -bedroom flat.
 - b. The Respondent was believed to reside there alone.
 - c. The Property was not adapted for the Respondent's use. The Applicant was not aware of it being especially suitable for his needs.
 - d. The Respondent had a dog, which to her understanding was a currently banned breed.
 - e. From the maintenance visit of a few months ago, she had found:
 - i. The Property generally in a very untidy and smelly state. She described it as in "disarray", "disgusting" and the smell as "rancid".
 - ii. There were multiple ashtrays, as well as 'grinders' for grinding up smoking materials, lying around.
 - iii. The ceiling, walls, and uPVC windows showed evidence of tobacco staining.
 - iv. The carpets were stained.
 - v. There was a smell which she believed was dog urine on the carpets.
 - vi. Unwashed dishes were piled up and there were bags of rubbish in the kitchen.

The Respondent's conduct was, in the Applicant's opinion, a breach of the Tenancy Agreement in regard to good maintenance of the Property, not smoking

in the Property, and ensuring any animals did not foul or cause damage to the Property. We noted the terms of the Tenancy Agreement at clauses 17, 21, 39, 50 and 52.

13. No motion was made for expenses.

Findings in Fact

14. On or about 12 March 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of 12 March 2021 (“the Tenancy”).
15. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £450 a month in advance on the 12th day of each month.
16. On 8 November 2023, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in substantial rent arrears (said to be £8,100) and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act.
17. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 8 December 2023.
18. The Applicant’s agent served a copy of the Notice to Leave on the Respondent on 8 November 2023 by email, and by recorded delivery post, in accordance with clause 4 of the Tenancy Agreement.
19. On or about 30 January 2024, the Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act.
20. As at the date of the Notice to Leave, rent arrears were equivalent to 17 months’ of rent arrears arising from non-payment through a period from 12 June 2022 to 11 November 2023 (resulting in arrears of £7,650, contrary to the terms of the Notice).
21. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon North Lanarkshire Council by the Applicant on 30 April 2024.
22. The Applicant provided the Respondent with pre-action protocol information by way of recorded delivery letter on 17, 24 and 31 October 2024.
23. As of 21 August 2024, the Respondent remained in arrears of rent in the amount of £11,270 which is equivalent of over 25 months of rent.
24. The Respondent does not claim to have paid any amount of the arrears of £11,270 remaining as at 21 August 2024.

25. The sum of arrears remaining as of 21 August 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
26. On 19 July 2024, the Tribunal intimated to the Respondent the date and time of the CMD of 21 August 2024 by Sheriff Officer.
27. The Respondent has no children nor dependents residing with them.
28. The Property is not specially adapted for the use of the Respondent.
29. The Property or its location is not especially suitable for the Respondent.
30. The Respondent (nor anyone on his behalf) made any payment of rent between 14 May 2022 and 17 July 2024.
31. The current payments of rent received from Universal Credit fail to cover the passing rent. The Respondent has made no proposal to cover the shortfall.

Reasons for Decision

32. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been materially correctly drafted and served upon the Respondent. Reading the statement of arrears against the Notice to Leave, it does appear that the figure in the Notice to Leave includes the rent due by 12 November 2023, which was not yet overdue as at the date of the Notice. The Notice therefore contains a minor error, but the valid arrears within the Notice still amounted to 17 months of arrears as at the date of the Notice, and we were not informed of any attempt made to pay any sum of arrears subsequent to the Notice, nor query the figure. We do not believe there are any grounds to disregard the Notice in the circumstances.
33. Ground 12A of the said Schedule applies if:
 - (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 subparagraph (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).*

- (4) *For the purpose of this paragraph—*
 - (a) *references to a relevant benefit are to—*
 - (i) *a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*
 - (ii) *a payment on account awarded under regulation 93 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.*

- 34. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. The arrears were substantial, were not addressed by the Respondent, and no communication was made as to a dispute as to the arrears amount. Further there was no meaningful communication as to the reason for the arrears, and no proposal had been made to pay rent or the shortfall in the current payments from benefits. Further, we were satisfied that there is nothing to suggest that Respondent's failure to pay was related to an issue with benefits. We were thus satisfied that Ground 12A was made out.

- 35. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicant to seek eviction given the amount, the duration of the arrears, and the lack of communication on the arrears. We held that it is reasonable to evict in all these circumstances. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.

- 36. The allegations of other breaches of the Tenancy (in regard to smoking, the condition of the Property, the failure to control a dog within the Property, and potential mis-use of substances) would all be relevant factors to consider when assessing reasonableness but the arrears are so substantial we do not see any efficacy in considering Findings of Fact on those points. These points were not evidenced by any photographs from the inspection, and to consider these

matters further would only serve to delay determination of any application where the grounds for eviction are already overwhelming.

37. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

Decision

38. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12A of Schedule 3 of that 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
V.

-

J. Conn

V. Bremner

Legal Member/Chair

Date _____