



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/23/4242

Re: Property at 9 Millgate Road, Hamilton, South Lanarkshire, ML3 8JQ (“the Property”)

Parties:

Dr Niccolo Capanni, Ms Anita Claire Jamieson, 14 Hilton Street, Aberdeen, AB24 4QX (“the Applicant”)

Mrs Danielle McAvoy, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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 received on 28 November 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 10 (tenant not occupying) and Ground 12 (rent arrears over 3 consecutive months) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £2,393.99, evidence regarding the ‘pre-action protocol’ and evidence of the respondent’s failure to occupy. A

payment application was lodged at the same time and has been conjoined with this application.

2. Following further procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 3 April 2024. The Respondent's current address is unknown and attempts by the Applicant to trace her through Sheriff Officers were unsuccessful. Notification of the application was made to the Respondent, together with the date, time and arrangements for a Case Management Discussion ("CMD"). Service was made on the Respondent by way of advertisement on the Tribunal's website for the requisite period. The Tribunal also emailed the Respondent using the address provided by the Applicant in their application. No written representations were lodged by the Respondent prior to the CMD.
3. By email dated 2 August 2024, the Applicant's representative submitted an application to amend the payment application in order to increase the sum sought to £7,339.32 being the amount owing as of that date, together with an updated Rent Statement in support. Said email was copied to the Respondent by the Applicant's representative.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place by telephone conference call on 16 August 2024 at 10am, attended by both Applicants, who were represented by Miss Alexandra Wooley, Solicitor of BKF & Co. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but she did not do so.
2. Following introductions and introductory remarks by the Legal Member, Miss Wooley was asked to address the Tribunal on the application(s). By way of background, Miss Wooley confirmed that there have been no further payments received to the rent account since the updated rent statement of 2 August 2024. The amount outstanding in terms of arrears accordingly remains as £7,339.32. Miss Wooley advised that there had been antisocial behaviour in relation to the Respondent's tenancy. The Applicants required to replace the main door of the Property in September 2023, as it had been damaged through antisocial behaviour. The Applicants' letting agents contacted the Respondent as she was not present at the Property and she advised that she was currently staying with her mother. The letting agents offered her the keys so that she could access the Property in order to remove her belongings. She removed some items and attended again at the Property in January 2024 but, despite numerous attempts by the letting agents to contact the Respondent, she has failed to remove the remainder of her belongings or return the keys to them. There has been no further contact with the respondent since March 2024. The Respondent has not fully given up possession of the Property, necessitating an eviction order being sought. Rent arrears have continued to increase over this period which the letting agents have previously notified the Respondent she remains liable for.

3. Miss Wooley further explained that the Applicants wished to do things 'by the book' to keep themselves in the right legally and had no confidence that possession could be taken back in these circumstances. Although the Respondent had partly vacated in October 2023, Universal Credit payments in respect of the rent continued to be received until December 2023. As far as the Applicants were concerned, the Respondent had indicated that she still wanted to access the Property and had retained the keys. She still has possessions in the Property. Applications were lodged with the Tribunal in November 2023, one of the grounds of eviction being that the Respondent was not occupying the Property. There were already substantial rent arrears owing at that time, as per the 'pre-action protocol' letters sent to the Respondent by the letting agent. No concrete reasons for the rent arrears or the Universal Credits payments stopping were provided by the Respondent to the letting agents. The Tribunal process took longer than would normally be expected to reach this stage and this was not due to any fault on the part of the Applicants.
4. The Applicant, Dr Capanni, also provided some further background information. He explained that they had had to attend during the night to secure the door in September 2023 due to damage caused by people attending at the Property who were known to the Respondent and trying to gain entry. The Respondent had gone to stay with her mother and there was some communication with the Respondent and her mother about her getting keys to the new front door, but no indication given at that time that this was to be a permanent arrangement. The letting agent has subsequently tried to contact the Respondent at her mother's address but been told that she is no longer there and that her mother's address was no longer to be used for contact. The Respondent's belongings which have not yet been removed include large items of furniture such as bunk beds, white goods and clothing. The Respondent initially moved into the Property with her two children but the Applicants are not aware whether they stayed with her all the time. There was also a male staying with her sometimes and a pet, according to neighbours. Dr Capanni confirmed that the Applicants have five other properties which they let out currently, although one of those has another tenant who is not paying rent.
5. Miss Wooley summed up in respect of the eviction application, requesting that the Tribunal grant an eviction order in terms of Grounds 10 and 12 which she submitted had been established and which was reasonable in the circumstances. Miss Wooley submitted that almost a whole year's rent is now owing and arrears will continue to accrued until the tenancy is terminated. There has been no-one living in the Property for some time, causing potential issues with security and lack of maintenance. Although the Applicants have other properties that they rent out, they have another tenant who is not paying either. They have not been able to re-let this Property and their finances have been impacted as a result of this and the significant rent arrears. Miss Wooley stated that it would be of benefit to the Respondent too for the tenancy to be terminated, stopping her ongoing liability for rent. If an eviction order is granted, the local authority will also be under a duty to provide accommodation to the Respondent if she applies under homelessness.

6. The Tribunal adjourned briefly to discuss and, on re-convening, advised that the Tribunal was persuaded to grant the eviction order sought. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 16 February 2023.
3. The monthly rent in terms of the tenancy is £625.
4. There was a background of rent arrears, with rent payments being missed between March and August 2023.
5. Universal Credit payments towards rent then commenced and were received for the period August to December 2023.
6. The last payment into the rent account was on 8 December 2023 of £625.
7. No payments have been received since.
8. The Applicant's letting agent contacted the Respondent about the arrears on numerous occasions but were not given any explanation.
9. The Respondent left the Property in or around September 2023 to reside with her mother for a period but her present whereabouts are unknown.
10. Contact with the Respondent was maintained between September 2023 and March 2024.
11. The Respondent has not formally vacated the Property and has retained keys and left furniture and other belongings in the Property, despite several requests to fully vacate.
12. The tenancy is ongoing and the Respondent remains liable for rent until the tenancy is properly terminated.
13. The rent arrears outstanding when this application was submitted to the Tribunal on 28 November 2023 amounted to £2,393.99 and now amount to £7,339.32.
14. The Applicant complied fully with the 'pre-action protocol' in respect of the rent arrears.
15. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email dated and sent on 5 September 2023.

16. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 6 October 2023.
17. The Tribunal Application was submitted on 28 November 2023.
18. 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.
19. The Respondent has been in arrears of rent for three or more consecutive months.
20. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
21. The Property is not being occupied as the only or principal home of the Respondent.
22. The Respondent has failed to formally surrender the tenancy or to return the keys or to clear the Property of all their belongings.
23. The Respondent has not submitted any written representations in respect of this Application.
24. The Respondent did not attend the CMD.
25. The level of rent arrears and the Applicant's inability to recover possession of the Property is impacting negatively on the Applicant's finances.
26. There are potential security and maintenance issues as a consequence of the Property not being occupied.
27. The termination of the tenancy is also in the interests of the Respondent in terms of ending her ongoing liability for rent.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant, Dr Capanni, and their legal representative at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend the CMD, having been properly and timeously notified of same by way of advertisement on the Tribunal website for the requisite period from 12 July 2024 to 16 August 2024 inclusive, conform to Certificate of Service by Advertisement dated 28 November 2023.

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 grounds of eviction relied upon in this application, namely Grounds 10 and 12 of Schedule 3 to the 2016 Act, as amended, and were satisfied that all requisite elements of each of these grounds had been met. The Tribunal was satisfied that the Respondent was not occupying the let Property as her only or principal home, that there were substantial rent arrears in excess of £7,000 and that the rent had been continuously in arrears for a lengthy period of time.
4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and to do so at this stage. Although the Respondent left the Property some months ago, she had not properly vacated the Property nor given up possession. Her failure to cooperate in these matters or provide a forwarding address had delayed the Applicant in being able to recover possession of the Property for some months. This had impacted negatively on the Applicant due to the increasing and significant rent arrears owed, their inability to re-let the Property to start recouping some income and concerns regarding the security and condition of the Property, particularly with regard to antisocial behaviour and damage to the Property whilst the Respondent was still in occupation. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need 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.

Legal Member/Chair

16 August 2024
Date