



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”)

Chamber Ref: FTS/HPC/EV/24/1055

Re: Property at 274c Blackness Road, Dundee, DD2 1RW (“the Property”)

Parties:

Beog Developments Ltd, 12 Fairfield Road, Broughty Ferry, Dundee, DD5 1PL (“the Applicant”)

Mr Darren James Somerville, 274c Blackness Road, Dundee, DD2 1RW (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

1. This is an application for recovery of the Property. The application is dated 1 March 2024. The Applicant is seeking recovery under Ground 12, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that a tenant has been in rent arrears for three or more consecutive months.
2. A case management discussion was held by teleconference on 29 August 2024. Ms Melissa Coleman, letting agent, represented the Applicant who was not in attendance. There was no appearance by the Respondent and the tribunal had sight of a Sheriff Officer’s Certificate of Intimation confirming that notice of the case management discussion had been served on the Respondent on 30 July 2024.

3. No written representations had been submitted by either party.
4. An updated rent statement had been submitted by the Applicant on 13 August 2024.

Preliminary Matters

5. The Legal Member outlined the purpose of a case management discussion.
6. Miss Coleman said that the Applicant had submitted all the evidence it had in support of its application.
7. The tribunal noted that the Respondent had not submitted representations or arranged to be present or represented at the case management discussion. The tribunal decided that it had sufficient information to determine the application and that there was no requirement for a Hearing to be arranged.
8. **Documents before the tribunal**

8.1 Private Residential Tenancy Agreement dated 15 November 2021 between the Applicant and the Respondent showing the start date of the tenancy to be 26 November 2021 and the monthly rent to be £525.

8.2 Copy Notice to Leave dated 12 December 2023 and copy email confirming that it was served on that date.

8.3 Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 and dated 1 March 2024.

8.4 Rent statement dated 1 August 2024 showing the arrears of rent to be £1587.08.

8.5 Email and letters from Struan Baptie Property Management to the Respondent dated 18 October 2023, 16 November 2023 and 5 December 2023 with regard to arrears and providing advice to Respondent with regard to seeking assistance.

8.6 Exchange of emails between the Applicant's agents and the Respondent.

9. Findings in Fact

9.1 The Applicant is the owner of the Property.

9.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property with the tenancy commencing on 26 November 2021.

9.3 The monthly rent for the Property was initially £525 and is currently £540.75.

9.4 As at the date of the Notice to Leave, the rent arrears amounted to £1908.75.

9.5 The Notice to Leave which was dated 12 December 2023 referred to Ground 12 and stated that it was being relied on by the Applicant as the reason for seeking recovery of the Property.

9.6 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 13 January 2024.

9.7 Proceedings for eviction commenced with submission of the application dated 1 March 2024.

10. Finding in Fact and Law

10.1 The Respondent has been in rent arrears for three or more consecutive months.

10.2 It is reasonable to grant the order of eviction.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

S.51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3, Part 1 Ground 12

Rent arrears

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

(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.

Deliberations and Reasons

11. The rent was originally £525 per month. A letter to the Respondent dated 23 August 2023 confirmed that the rent had been increased to £540.75 per month and, at that date, the level of arrears was £945.75.

12. The tribunal had regard to the rent statement. The statement demonstrated that the rent arrears have accrued since March 2022 and that, since that month, the Respondent has been in arrears with rent.
13. The rent statement discloses that the last payment the Respondent made was on 13 June 2024 and that it was for £500. There had been a payment of housing benefit on 17 June 2024 for the sum of £55.54.
14. Ms Coleman stated that there had been numerous attempts to put payment plans in place and she tribunal noted email exchanges between the letting agent and the Respondent which evidenced this.
15. Miss Coleman said that the extent of rent arrears demonstrated the lack of communication and commitment of the Respondent.
16. The tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months.
17. The tribunal was satisfied that the notice to leave was in order and that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.
18. The tribunal was satisfied that the Applicant is the owner of the Property, is the landlord in terms of the private residential tenancy agreement and is therefore entitled to make the application for an order of eviction.
19. The tribunal considered that it required to take a two stage approach in considering the application. Having determined that Ground 12 is met, it then requires to have regard to sections (4), (5) and (6) of Ground 12.
20. The tribunal was satisfied that the landlord had sent the necessary communications in terms of the pre-action protocol. The documentation submitted in support of the application consisted not only pre action protocol letters but also emails which demonstrated that the Applicant's agent had attempted to engage with the Respondent to assist him on dealing with the arrears.
21. Ms Coleman said that the Property is a one bedroom flat and that, as far as she was aware, the Respondent resides there alone.
22. Ms Coleman said that the Respondent had been working at the commencement of the tenancy but that she had no information on his current status.
23. Ms Coleman referred the tribunal to the rent statement which shows that there had been some payments of discretionary housing payment and housing

benefit between March 2024 and June 2024. None of these payments had been sufficient to pay all the rent and the last one was on 17 June 2024. Ms Coleman said that she did not know if the payments had stopped because the Respondent was no longer entitled to them or because he is no longer living in the Property.

24. Ms Coleman said that, at the date of the first benefit payment, there were arrears of rent amounting to £1121.29.
25. Ms Coleman said that the Applicant has a portfolio of ten rental properties which they maintain well. She said that it would be reasonable for the Respondent to be evicted from the Property because the Applicant is currently getting no income from the Property and because of the amount of rent arrears and the period of time over which they had accrued.
26. In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. It is a balancing exercise. The Respondent had chosen not to engage with the Tribunal process and had not submitted written submissions or participated in the case management discussion. The information the tribunal had about his personal situation was limited. The level of rent arrears was considerable and the tribunal had no difficulty in finding that this would be causing financial prejudice to the Applicant. The Respondent has a contractual obligation to pay rent and has not done so over a considerable number of months.
27. The tribunal took into account the amount of the rent arrears, the period of time over which they had accrued and the fact that the Applicant's finances are being adversely affected. It took into account that the Property is the home of the Respondent. In weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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.

**Martin J. McAllister
Legal Member
29 August 2024**