



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/1207

Re: Property at 2nd Floor 9 Roseberry Street, Dundee, DD2 2NP (“the Property”)

Parties:

Mrs Anita Halley residing at North Plaidy, Turiff, Aberdeenshire AB53 5RE, (“the Applicant”) per her agents, MML Law, Meadowplace Buildings, Bell Street, Dundee (“the Applicant’s Agents”)

Ms Nadia Jackson residing at 2nd Floor 9 Roseberry Street, Dundee, DD2 2NP and Mr Fraser Gow residing sometime at 2nd Floor 9 Roseberry Street, Dundee, DD2 2NP (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 30 March 2024 and 13 May 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12A of Schedule 3 to the 2016 Act, that the tenant has substantial rent arrears.

2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties showing a monthly rent of £650.00;
 - ii) copy Notice to Leave in terms of Ground 12A of Schedule 3 to the Act dated 28 November 2023 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £7,141.50 due and owing at March 2024 and with no payments received since September 2023;
 - v) pre-action requirement letters sent to the Respondents.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 14 October 2024 at 14.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to Nadia Jackson, the first named the Respondent, by Sheriff Officer service on 13 September 2024 and was served by advertisement on Fraser Gow, the second-named Respondent, on 13 September 2024.

CMD

4. The CMD took place on 14 October 2024 at 14.00 by telephone. The Applicant was not present and was represented by Mr. Lawson of the Applicant's Agents. The Respondents were not present and were not represented. They did not submit written representations.

5. Mr. Lawson confirmed that the Applicant sought an eviction Order. He advised that there had been no contact from the Respondents and no payments had been made since September 2023. He advised that no contact had been made by the Respondents to the Applicant, her letting agents or to his office. In particular, no response had been made to the pre-action correspondence.

6. With regard to the circumstances of the Parties, Mr. Lawson advised that as far as he is aware the Applicant has no other rental properties and has a mortgage on the Property. He thought that the Respondents, Miss Jackson, in particular, appear to continue to reside in the Property.

Findings in Fact

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties commencing on 1 July 2018;
 - ii) The monthly rent is £650.00;

- iii) There are rent arrears in excess of £7,141.50, which amounts to in excess of 11 months' rent;
- iv) The Respondents have not made any payments in respect of rent since September 2023;
- v) The Respondent has substantial rent arrears; for three or more consecutive months;
- vi) A valid Notice to Leave was issued by the Applicant to the Respondent;
- vii) PAR letters were issued on behalf of the Applicant to the Respondent;
- viii) The Applicant relies on regular payment of the full rent to meet her financial commitments secured on the Property.

Issue for the Tribunal

8. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12, now Ground 12, of Schedule 3 to the Act as set out in the Application. Ground 12 states *“(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 sub-paragraph (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 (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.”*

Decision and Reasons for Decision

9. The Tribunal had regard to all the information before it and to its Findings in Fact.
10. Having found that the Respondent is in substantial rent arrears, the Tribunal found that the eviction Ground has been met.
11. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
12. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
13. The Tribunal, having no evidence in respect of state benefits, was satisfied the their? being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
14. The Tribunal noted that the Applicant had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1st October 2022.
15. The Tribunal then had regard to the circumstances of the Parties.
16. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
17. The Tribunal then looked to balance the rights and interests of both parties.
18. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondents had not engaged in any way with the Applicant and her representatives in respect of the rent arrears and had not made any payments of rent in over a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
19. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondents would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.

20. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

K. Moore

14 October 2024

Legal Member/Chair

Date