



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/24/0895

Re: Property at Muirhall Cottage, Meikle Earnock Road, Hamilton, ML3 8RN (“the Property”)

Parties:

Clyde Mitchell, 36 Grayling Mead, Romsey, SO51 7RU (“the Applicant”)

Miss Natalie McGee, Muirhall Cottage, Meikle Earnock Road, Hamilton, ML3 8RN (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. An application was received from the Applicant’s solicitor, Mr Duncan Hamilton of ELP Arbuthnott McClanachan solicitors, on behalf of the Applicant on 21 February 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). The application sought recovery of the property under Ground 12A as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form in respect of the application were:
 - (i) Copy private residential tenancy agreement between the parties, which commenced on 15 December 2017.

- (ii) Copy Notice to Leave dated 6 November 2023 citing ground 12A, and stating the date before which proceedings could not be raised to be 7 December 2023.
 - (iii) Certificate of posting and proof of delivery on 7 November 2023 relating to the Notice to Leave.
 - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to South Lanarkshire Council, together with proof of sending by email on 20 February 2024.
 - (v) Copy rent statement showing arrears of rent due by the Respondent to be £6843.02 as at February 2024.
 - (vi) Copies of pre-action requirements letters sent by the Applicant's solicitor to the Respondent on 20 December 2022 and 1 September, 6 October and 6 November all 2023.
3. Further information was requested from the Applicant by the tribunal administration on 13 May 2024, and a response was received from the Applicant's solicitor on 27 May 2024.
 4. The application was accepted on 20 June 2024.
 5. Notice of the case management discussion (CMD) scheduled for 8 October 2024, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 29 August 2024. The Respondent was invited to submit written representations by 18 September 2024.
 6. A further written submission was received from the Applicant's solicitor on behalf of the Applicant on 1 October 2024.
 7. No written representations were received from the Respondent prior to the CMD.

The case management discussion

8. A CMD was held by teleconference call on 8 October 2024 to consider both this application and the accompanying civil proceedings application for a payment order in respect of the rent arrears. The Applicant was represented by his solicitor, Mr Hamilton. The Respondent was not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from her.

9. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the Respondent.

The applicant's submissions

10. Mr Hamilton asked the tribunal to grant an eviction order under ground 12A (substantial rent arrears). He pointed to the most recent rent statement which he had submitted to the tribunal on 1 October 2024. The Respondent had been in rent arrears for almost three years, since November 2021. She was in receipt of housing benefit but this did not cover her full rent, and the arrears had been gradually increasing over time without being addressed by the Respondent. The outstanding arrears were now £7758.54 as at 10 September 2024. Given the ongoing shortfall between the rent and the housing benefit payments, there appeared to be no prospect of any outcome other than gradually increasing arrears.
11. Addressing the issue of reasonableness, Mr Hamilton submitted that the Applicant had made significant efforts to comply with the pre-action requirements, several letters having been sent to the Respondent setting out the required information. He also pointed to the informal emails between the parties which had been included in his submission of 1 October. He said that the general tone of the correspondence from the Applicant made clear that he had been willing to come to an arrangement with the Respondent to allow her to maintain her tenancy.
12. The Respondent had not, however, engaged with the Applicant in any meaningful way regarding repayment of the arrears. She had taken no steps to either ensure that the rent was paid in full on an ongoing basis or that the outstanding arrears were addressed. The Applicant had come to the conclusion that there was no reasonable prospect of an agreement being reached to repay the arrears, and therefore the Applicant had decided that he had no choice but to bring the Respondent's lease to an end.
13. The Applicant had not, however, applied for deductions to be made from the Respondent's universal credit in respect of the rent arrears, as he was unaware that he could do so.
14. The Respondent was in receipt of housing benefit, and the Applicant had no reason to believe that the Respondent's arrears were wholly or partly due to a delay or failure in the payment of a relevant benefit.
15. Mr Hamilton told the tribunal that the ongoing situation with the Respondent's rent arrears was contributing to financial difficulties which the Applicant was

experiencing, due to various issues including increased mortgage repayments. He pointed to financial evidence which he had submitted on behalf of the Applicant demonstrating that he and his wife had a substantial outstanding mortgage over the property, and various other debts. The Applicant therefore required to repossess the property to address these.

16. Mr Hamilton said that it was his understanding that the Applicant did not have other rental properties. He and his wife had bought the property to live in as their own home, but had moved to England following a change of circumstances. He believed that they were likely to sell the property if an eviction order was granted.
17. While there had previously been some discussion between the Applicant and the Respondent regarding the possibility of the Respondent buying the property from the Applicant and his wife, there had been no further progress with this.
18. Mr Hamilton was unable to provide the tribunal with much information about the Respondent's circumstances. The Applicant understood that the Respondent was still living in the property with her partner and her daughter. He believed that the Respondent's daughter- whom he thought to be in her late teens or early twenties - had recently been experiencing some personal difficulties.

Findings in fact

19. The tribunal made the following findings in fact:

- The Applicant owns the property jointly with his wife, Dr Amy Mitchell, who consented to the Applicant entering into the tenancy agreement in his sole name, and making the application to the tribunal in his sole name.
- The Applicant and his wife are jointly registered as the landlords for the property
- There is a private residential tenancy in place between the parties, which commenced on 15 December 2017.
- The rent due under the tenancy agreement was £924 per month, but the parties later agreed that this should be reduced to £860 per month.
- The rent is due in advance on the 10th of each month.
- At present, the sum of £658.96 is being paid direct to the Applicant in housing benefit for the Respondent every four weeks.
- The Notice to Leave was validly served on the Respondent by means of recorded delivery on 7 November 2024.
- Ground 12A was a valid ground for eviction in relation to private residential tenancies at the time the Notice to Leave was sent to the Respondent.
- The Respondent is currently living in the property with her partner and her daughter.
- The Respondent has been in arrears of rent since November 2021.

- The Respondent was in arrears of more than six months' rent as at the date the Notice to Leave was given to her
- The Applicant has complied with the pre-action requirements for private residential tenancies as set out in regulation 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
- The Applicant and his wife have a substantial mortgage outstanding on the property. Their monthly mortgage payments of £1875.89 are substantially higher than the monthly rent on the property.
- The Respondent owed the Applicant rent arrears totalling £7758.54 as at 10 September 2024

Reasons for decision

20. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

21. The tribunal firstly considered whether the legal requirements of ground 12A, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 12A states:

Substantial rent arrears

12A(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 (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.

22. Having had regard to all of the evidence before it, the tribunal was satisfied that the Respondent had accrued rent arrears under the tenancy in respect of one or more periods, and that the cumulative amount of those rent arrears equated to, or exceeded, an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on ground 12A.

23. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case. Firstly, it considered the matters in paragraph 3 of Ground 14A as set out above. The tribunal was satisfied that the Applicant had complied with the pre-action protocol for private residential tenancies as set out in regulation 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was also satisfied that the Respondent was not in arrears over the period in question wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit.

24. The tribunal took into account the Applicant's circumstances. The Respondent's ongoing rent arrears were clearly contributing to, if not causing, his financial difficulties. The Applicant had clearly tried to resolve matters with the Respondent without success, although he had not enquired about seeking

deductions from the Respondent's benefit towards her rent arrears. It appeared that he and his wife intend to sell the property once it is vacant.

25. The tribunal took into account what it knew about the Respondent's circumstances. She has been living in the property for almost 7 years. The written evidence before it suggested that her daughter, who is living with her, is unwell and has mobility issues. Mr Hamilton told the tribunal that he believed the Respondent's daughter had recently experienced some difficult personal circumstances.

26. The Respondent had not opposed the application. In the absence of written representations from the Respondent or any appearance by her at the CMD, the information available to the tribunal about her personal circumstances was unfortunately limited.

27. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the significant rent arrears owed by the Respondent, which continue to increase each month. The Respondent has not attempted to pay the shortfall in her rent on an ongoing basis, or to repay the rent arrears owed for several years. This has contributed to the Applicant's financial difficulties. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

Decision

The tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

8 October 2024

Legal Member/Chair

Date

