



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/24/1223

Re: Property at 28A Gillies Street, Troon, KA10 6QL (“the Property”)

Parties:

Ringley Park Properties Ltd, Office 2, Room 8 Kirkhill House, 81 Broom Road East, Newton Mearns, Glasgow, G77 5LL (“the Applicant”)

Mr Steven George McVey, 28A Gillies Street, Troon, KA10 6QL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 11 and 12 June 2020;
 - (ii) Notice to Leave dated 7 February 2024 citing ground 12, together with proof of service on the Respondent by Sheriff Officers on 8 February 2024;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Ayrshire Council together with proof of service by email;
 - (iv) Rent Statement;
 - (v) Notices of rent increase dated 21 March 2023 and 4 April 2023; and
 - (vi) Copy correspondence from the Applicant's representative to the Respondent dated 4 December 2023, 18 December 2023, 15 January 2024 and 7 February 2024 in compliance with the rent arrears pre-action protocol.
2. By Notice of Acceptance of Application dated 18 June 2024 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 3. On 2 September 2024 the Tribunal received an email from the Applicant's representative with an updated rent statement.
 4. On 6 September 2024 the Tribunal received an email from Ayr Housing Aid Centre SCIO ("AHAC") on behalf of the Respondent. AHAC provided a mandate from the Respondent authorising them to represent him in the proceedings together with a written response to the application. In summary AHAC confirmed that the Respondent accepted a private residential tenancy was in place between the parties and that a valid notice to leave had been served. AHAC explained that the Respondent had been offered permanent accommodation from the local authority and was making arrangements to vacate the property as soon as possible, with assistance from a local housing support charity. The Respondent therefore intended on leaving the property in advance of the Case Management Discussion. If he was unable to do so, AHAC requested that the enforcement of any eviction order be deferred to allow time for the Respondent to complete his move from the Property.

Case Management Discussion

5. The Case Management Discussion took place on 18 September 2024 by teleconference. The Applicant was represented by Ms Angela Lowe. The Respondent was represented by Mr David Anderson of AHAC. The Tribunal explained the purpose of the Case Management Discussion and asked parties to address it on their respective positions regarding the application.
6. Ms Lowe advised that the Applicant sought an eviction order. Rent arrears had built up over time on the Respondent's rent account. The Respondent had been

reluctant to communicate with the Applicant and to make payment. The Applicant had been unable to establish the Respondent's income, having been told he was receiving benefits, but then he had a job, and then he was not in employment. The Applicant had made an application for direct payments from universal credit on a few occasions but these had been rejected with no specific reason given. The Applicant therefore had no choice but to submit an application to the Tribunal for an eviction order.

7. Mr Anderson confirmed that the Respondent had now removed from the property. He made reference to the offer letter from the local authority which had been submitted with his response to the application. The Respondent had been offered permanent accommodation in Ayr which he had accepted. He was receiving support from a local charity Seascapes to furnish the property and they were assisting him with the move. With regards to the Respondent's current income Mr Anderson believed he was in receipt of universal credit.
8. In response to questions from the Tribunal Ms Lowe advised that the Applicant had not been notified that the Respondent had left the property. They were unclear as to whether he was still residing there. The Applicant had asked the Respondent to let them know if he did vacate so that they could advise their insurers. However the Respondent had not done so. Ms Lowe did state that the Applicant wondered if something had happened as they had a gas safety check organised for the week prior to the Case Management Discussion. The Respondent had agreed that he would allow access however when the gas engineers turned up they were unable to get in. The Respondent had either left, or he wasn't answering the door. Ms Lowe reiterated that there had been no official confirmation that the Respondent had left.
9. In response to questions from the Tribunal Mr Anderson stated that the Respondent was 40 years old and resided alone. He confirmed that he did not see any need for enforcement of the eviction order to be deferred, as he did not believe the order was necessary in any event given that the Respondent had now left the property.
10. The Tribunal proceeded to hold a short adjournment to deliberate before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

9. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1.1.1 1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 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 subparagraph (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 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.

Findings in Fact

10. The parties entered into a Private Residential Tenancy Agreement dated 11 and 12 June 2020.
11. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
12. In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £375 per calendar month.
13. The rent was subsequently increased to £408 per month on 1 July 2023.
14. On 8 February 2024 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers.
15. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 9 March 2024.

16. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
17. As at the date of service of the Notice to Leave arrears in the sum of £1820 were outstanding.
18. As at the date of the Case Management Discussion arrears in the sum of £4676 were outstanding.
19. The last payment to the rent account was on 14 December 2023.
20. The Applicant has made efforts to engage the Respondent regarding the rent arrears by sending correspondence in accordance with the rent arrears pre-action protocol.
21. The Respondent is 40 years old and resides alone.
22. The Respondent has secured alternative accommodation with the local authority.
23. The Respondent is no longer residing at the property.
24. It cannot be established that the arrears are due to any failure or delay in payment of a relevant benefit.

Reasons for Decision

25. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties.
26. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.
27. The Tribunal therefore considered whether ground 12 applied in this case. The Tribunal accepted the evidence submitted by the Applicant in the form of a rent statement, which confirmed arrears in the sum of £4676 were outstanding as at the date of the Case Management Discussion against a monthly rent of £408. The last payment to the rent account had been in December 2023. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent.
28. The Tribunal then considered the question of reasonableness. The Tribunal accepted Mr Anderson's submissions that the Respondent was no longer residing in the property, and had secured accommodation with the local authority which was supported by the correspondence produced from South Ayrshire Council. The Tribunal further noted that the Respondent was 40 years old with no dependents. The Tribunal gave significant weight to these two material factors as relevant to the question of reasonableness. The Tribunal also gave significant

weight to the fact that the level of arrears was high and there had been no payments to the rent account for approximately nine months.

29. Taking those factors into account, the Tribunal ultimately concluded that it would be reasonable to make an eviction order in the particular circumstances of this case. Whilst Mr Anderson had questioned the need for such an order in circumstances where the Respondent had vacated the property, the Tribunal noted that the Respondent had not taken any formal steps to terminate the tenancy by giving notice to the Applicant and returning the keys. The Applicant was therefore entitled to the protection of an eviction order and the Tribunal was satisfied that the making of the order would be reasonable in this case.
30. Accordingly the Tribunal concluded that ground 12 had been met and determined to make an eviction order.
31. The decision of the Tribunal was unanimous.

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.

R O'Hare

18 September 2024

Legal Member/Chair

Date