



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/24/1301

Re: Property at 39 Elm Grove, Alloa, FK10 1BG (“the Property”)

Parties:

Kingdom Initiatives Limited, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA (“the Applicant”)

Miss Shannon Young, 39 Elm Grove, Alloa, FK10 1BG (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

1. On 19th March 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 11th February 2022 and a rent of £489.77 per month, rising to £504.46 per month;
 - ii. Copy Notice to Leave dated 28th September 2023;
 - iii. Sheriff Officer’s certificate of service confirming service of the Notice to Leave on 28th September 2023;
 - iv. Section 11 Notice and proof of service;
 - v. Rent statement showing arrears of £5122 as at 1st March 2024;

- vi. Pre Action requirement letter dated 14th March 2024.
3. The Application was served on the Respondent by Sheriff Officers on 16th August 2024.
4. On 27th August 2024 the Applicant's solicitor lodged an up to date rent statement showing rent arrears of £7684.66.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Callaghan of TC Young, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Miss Callaghan sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She narrated the circumstances regarding the arrears position, and that the Applicant had complied with the pre action requirements, which confirmed that the ground had been met.
8. Miss Callaghan said that, as far as reasonableness was concerned, the Applicants required the payment of rent to assist them to provide good housing and to reinvest in services. They had attempted to contact the Respondent by letter, telephone and email, and by visiting. The last successful contact was on 24th May 2024 when the Respondent agreed to pay £650 per month to the rent and arrears, and also asked for permission to extend her patio to accommodate the Lazy Spa she had just bought. She did not adhere to the payment arrangement. She lives alone in the property and is believed to be in employment. She has not claimed benefits as far as the Applicant is aware.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 11th February 2022;
- c. The monthly rent was £489.77 rising to £504.46;
- d. A Notice To Leave, dated 28th September 2023, was served timeously and correctly;
- e. A section 11 notice was served on the local authority;
- f. The Application was served on the Respondent by Sheriff Officer on 16th August 2024;

- g. At the date the Notice to Leave was served the arrears were £3295.24, equating to just under seven months' rent;
- h. At the date the application was lodged with the Tribunal the arrears were £5122, equating to just over ten months' rent;
- i. At 2nd August 2024 the arrears were £7684.66, equating to just over fifteen months' rent.

Reasons for Decision

9. It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " , and

"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " , and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

10. The Tribunal now has to decide if it is reasonable to grant the eviction order.

11. The Tribunal were of the view in this case that the Applicant had established Ground 12 by provision of the rent statements. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the level of arrears in and of itself meant it was reasonable to grant the 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.

A. Kelly

16 September 2024

Legal Member/Chair

Date