



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/24/1335

Re: Property at 1 Saddlers Yard, Alyth, PH11 8AF (“the Property”)

Parties:

J & J Howe, Reform Street, Blairgowrie, PH10 6BD (“the Applicant”)

Mr Rhys Allan Millar, 1 Saddlers Yard, Alyth, PH11 8AF (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatriidge (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 20.3.24 under Grounds 12 and 12A of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. Tenancy agreement in the form of a Private Residential Tenancy (PRT) model tenancy agreement commencing on 1.1.20
 - b. Notice to Leave dated 15.2.24 on grounds 12 and 12A
 - c. Email sending same on 15.2.24 to Respondent
 - d. Rent statement dated May 2024 showing arrears of £5,211.08
 - e. Rent statement attached to Notice to Leave showing arrears September 2022 to February 2024 of £4,026.09
 - f. Letters to Respondent re rent arrears 21.2.23, 25.3.24, 31.1.24
 - g. Text screenshots of messages from Applicant to Respondent between 27.12.23 and 15.3.24 re tenancy obligations
 - h. S 11 notice to local authority

- i. Email from Council confirming receipt of same dated 21.3.24
 - j. Email 25.9.24 from Respondent's support worker with Mandate from Respondent to Turning Point Scotland dated 29.5.24
 - k. Email from support worker 18.9.24 confirming Respondent does not wish to stay in the property and will not provide any representations.
3. The case documents are referred to for their terms and held to be incorporated herein.
 4. On 5.9.24 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 5. No formal representations were received from the Respondent.

B: Case Management Discussion

1. The CMD took place by teleconference on 14.10.24. The Applicant attended the CMD. The Respondent attended with his representative Ms Livingstone from Turning Point Scotland.
2. The legal member explained the purpose of the CMD.
3. The Applicant is seeking an eviction order. She advised that the Respondent had not been in contact at all and that the arrears were now £6, 791.08 because nothing further had been paid by the Respondent since the application had been made. The tenant had been in arrears continuously since January 2022.
4. Mr Millar confirmed that he was in receipt of the appropriate benefits and that the arrears of rent were agreed and not due to a late or non payment of relevant benefits. He confirmed he lives in the property, a 2 bedroom flat, on his own and has no dependants living with him. There are no special adaptations to the flat and he is seeking to leave and be re-housed. He confirmed he received the Notice to Leave on 15.2.24 and that he knew about organisations to contact for help but had not engaged with repayment of the rent arrears.
5. Ms Livingstone advised that her organisation has been working with the Respondent for some months and that they provide housing support and work with the CAB.
6. The Applicant stated various attempts had been made to discuss this with the tenant and texts and letters had been sent advising him of the arrears and asking him to address these.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 1.1.2020.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.

4. The monthly rent of £395 is payable on the 9th day of the month and monthly in advance.
5. Rent arrears of ££4,026.08 accrued as shown in the Rent Statement submitted for the period of up to and including May 2024 had accrued by February 2024.
6. A total of £6,791.08 is outstanding as at the date of the CMD.
7. The Respondent has been in arrears of rent continuously since January 2022 and thus for a period exceeding 3 months at the time the notice to leave was served.
8. The rent arrears were equivalent to more than 13 months' rent at the time the Notice to Leave was served.
9. The Applicant had provided the Respondent with the opportunity to resolve the matter.
10. The Respondent has not addressed the rent arrears.
11. The Respondent is a single male residing in the 2 bedroom property with no dependent children living with him.
12. The property has no special adaptations.
13. The notice to leave gave the correct notice period and was served on 15.2.2024 by email as well as by personal delivery putting a copy of the notice through the Respondent's door.
14. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
15. No attempt to clear the arrears was made by the Respondent.
16. The Applicant provided the required S 11 notice and proof of service of same on the local authority.
17. The Applicant is losing money each month as the ongoing overheads for the property have not been covered by the rent.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

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 or

must 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.

Grounds under Schedule 3 of the 2016 Act

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

F26(2).

(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—

[F27(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 [F28, 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.

[F29(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.]

2. The Respondent has not made any representations. At the CMD he stated he would not do so because he wishes to leave the property. He is not objecting to the application and is not disputing any of the statements of the Applicant. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. The facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the application, the notice to leave and rent statement. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations of the Applicant and the Respondent and his representations at the CMD.

4. The Tribunal considered that the tenancy is a PRT. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements for notices under the 2016 Act.

5. The Tribunal found that Grounds 12 (3) and 12A of Schedule 3 of the 2016 Act applies in this case. These are discretionary grounds of eviction. There is clear evidence of the rent arrears accruing consistently since January 2022.

6. The Tribunal considered all relevant information with regard to the question of whether or not it would be reasonable to grant an eviction order in this case. This included the issues raised in Ground 12 (4). In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of significant and persistent rent arrears which have been accruing over a period of over 2 years and attempts of the landlord to engage the tenant in efforts address the arrears. The arrears have reached a level that far exceeds even the definition of "substantial rent arrears" in the new Ground 12A introduced by recent legislation. The Tribunal considered that in light of the level of arrears as shown in the rent statement and thus explicitly not disputed by the Respondent, the arrears themselves together with the absence of any attempt of the Respondent to address these arrears prima facie make out the reasonableness of an eviction order. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order and is not opposing the application.

7. Although the Applicant did not use the forms intended by the Scottish Government for landlords to comply with the Pre-Action requirements, the Applicant had attempted to advise the Respondent of the increasing arrears, had written to him regarding this and had attempted to contact him in other ways with no success. The Respondent was familiar with the benefits process and specifically stated that the arrears are not due to any issues with relevant benefits. There is no indication that the arrears resulted from non or late payment of relevant benefits. The Applicant had been patient and supportive of the Respondent and the Respondent simply did not engage in resolving the matter of rent arrears. Even after the Notice to Leave the Respondent did not propose a payment plan and he has not provided a proposal for payment since the application was made. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent. The arrears are now causing the Applicant an increasing deficit. The landlord has ongoing overheads for the property, which have not been covered by rental payments for months.

8. The Respondent has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. There is no suggestion of any medical conditions of the

Respondent which would lead to vulnerability. There are no small children living with the Respondent. No specific needs of the Respondent to live at the specific address have been raised. The Respondent's representative had advised the Tribunal on 18.9.24 that the Respondent does not wish to remain in the property and this was confirmed by the Respondent at the CMD. The Respondent and the Applicant wished a decision to be made on the day.

9. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on grounds 12 and 12A of schedule 3 of the Act.

10. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that more than one of the eviction grounds in schedule 3 of the Act applies.

11. As the Notice to Leave was served on 15.2.24. Ground 12A still applies to the application in terms of S 3 of The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 14.11.2024.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Grounds 12 and 12A of Schedule 3 of the Act. The decision 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.

Petra Hennig-McFatridge

14th October 2024

Legal Member/Chair

Date