



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/24/1704

Re: Property at 47 Lordburn, Arbroath, DD11 1JD (“the Property”)

Parties:

Mrs Karen Abbott, residing at Ashbrae Blackgate, Pitscandly, Forfar, DD8 3NZ (“the Applicant”) per her representative Wardhaugh Property, 155, High Street, Arbroath DD11 1DR (“the Applicant’s Representative”)

Mr Stephen George Stewart, residing at 47 Lordburn, Arbroath, DD11 1JD (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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 dated 22 March 2024 (“the Application”), the Applicant’s Representative applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties dated 1 February 2019 showing a monthly rent of £395.00;
 - ii) copy Notice to Leave in terms of Ground 12A of Schedule 3 to the Act dated 20 December 2023 with proof of sending;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Angus Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £3,315.00 due and owing at 1 December 2023 and with no full rent payments received since July 2023;
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 16 October 2024 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 13 September 2024.

CMD

4. The CMD took place on 16 October 2024 at 10.00 by telephone. The Applicant was not present and was represented by Mrs. McPherson of the Applicant's Representatives. The Respondent was not present and was not represented. He did not submit written representations. As Ground 12A of Schedule 3 to the Act, which had been in force at the dates of both the Notice to Leave and the Application, has now been repealed, the Ground for the Application was formally amended to Ground 12.
5. Mrs. McPherson confirmed that the Applicant sought an eviction Order. She advised that there had been no contact from the Respondent since the Notice to Leave was issued and no payments had been made since July 2023. Mrs. McPherson stated that the Applicant's Representatives had made significant attempts to contact the Respondent by letter, email, telephone and visits to the Property without success. She and her colleagues had left messages with the Respondent's employers asking him to contact the Applicant's Representatives, but he had not done so.
6. Mrs. McPherson confirmed that pre-application requirements had been fulfilled with several letters sent up until May 2024. There had been some response from the Respondent in December 2023 when he agreed to a payment plan. Although, he made payments towards this in January and February 2024, he stopped all further payments and the rent arrears now stood at £6,765.00. Mrs. McPherson confirmed that the rent had increased in 2022 to £415.00 per month by formal statutory notice.
7. With regard to the personal circumstances of the Parties, Mrs. McPherson advised that Property is the Applicant's only rental property. Mrs. McPherson

stated that the Respondent's has not allowed access to the Property and so the statutory safety certificates for the Property have lapsed causing the Applicant great concern. With regard to the Respondent, Mrs. McPherson advised that as far as she is aware, he remains residing in the Property on his own and is in employment.

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 of Schedule 3 to the Act as set out in the Application. Ground 12 states: "*12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (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 (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 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. (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."*

9. 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.

Findings in Fact

10. 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 11 February 2019;
 - ii) The current monthly rent is £415.00;
 - iii) There are current arrears of £6,765.00 at May 2024, which amounts to 16 months' rent;
 - iv) The Respondent has not made any payments in respect of full rent since July 2023;
 - v) The Respondent has been in 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 Respondent failed to adhere to a rent payment plan;
 - ix) The Applicant has only one rental property and
 - x) The Respondent lives alone and is in employment;
11. The statutory ground and procedure being established, and the Application not being opposed, the next issue for the Tribunal was to determine if it is reasonable to grant the Order.

Decision and Reasons for Decision

12. The Tribunal had regard to all the information before it and to its Findings in Fact.
13. Having found that the Respondent has been in rent arrears for three or more consecutive months, the Tribunal found that the eviction Ground has been met.
14. The Tribunal, having no evidence in respect of state benefits, was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

15. The Tribunal accepted 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.
16. The Tribunal then had regard to the circumstances of the Parties.
17. 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.
18. The Tribunal then looked to balance the rights and interests of both parties.
19. The Tribunal accepted that the Applicant is not a professional landlord and is entitled to rely on the rent as part of her regular income in order and to meet the running costs of the Property and is entitled to a commercial profit. The Tribunal had regard to the fact that the Respondent had not engaged in any way meaningful with the Applicant and their representatives in respect of the rent arrears and had not made any payments of full 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.
20. Although not of direct relevance to Ground 12, the Tribunal accepted that the Applicant has been placed under unnecessary stress by the Respondent’s refusal to co-operate with the annual safety inspections which landlords are required to carry out and by doing so has placed the Applicant in a difficult position with landlord registration. The Tribunal took the view that the Respondent’s behaviour in this respect shows that he has no regard for the Applicant as landlord and does not take his tenancy obligations seriously.
21. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, although he may not have an entitlement to accommodation, the Respondent 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.
22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
23. This Decision is 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.

Karen Moore

Legal Member/Chair —

16 October 2024

Date