



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/24/2127

Re: Property at 22/6 Shandon Crescent, Alexandria, G83 8EX (“the Property”)

Parties:

Ms Teresa Maxine Hall, 22/5 Shandon Crescent, Alexandria, G83 8EX (“the Applicant”)

Mr John Nixon, 22/6 Shandon Crescent, Alexandria, G83 8EX (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (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 10th May 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 3rd August 2023 and a rent of £700 per month;
 - ii. Copy Notice to Leave dated 3rd April 2024;
 - iii. Copy email dated 3rd April 2024 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

- v. Pre Action Requirement letter dated 25th January 2024;
 - vi. Rent statement showing arrears of £3500 as at April 2023.
3. The Application was served on the Respondent by Sheriff Officers on 23rd August 2024.
 4. On 9th September 2024 the Applicant's solicitor sent an email to the Tribunal lodging an up to date rent statement showing arrears of £6300 as at August 2024.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss White of Jackson Boyd, Solicitors. There was no attendance by the Respondent or any representative on his behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.
7. Miss White sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that there was a substantial level of arrears and made reference to the updated rent statement lodged on 9th September 2024. She said that the respondent had been in arrears for more than three consecutive months and that he had made no attempt to contact the Applicant to resolve the situation.
8. The Tribunal were satisfied that the ground had been established and asked Ms White to address the Tribunal on reasonableness. The rent is the Applicant's only source of income, and she has a mortgage over the property. The applicant is not aware of the Respondent having any dependents living with him, she is not aware of him having any disabilities and she is not aware of him having made any application for benefits.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 3rd August 2023;
- c. The rent was £700 per month;
- d. A Pre Action Requirement letter was sent to the Respondent on 25th January 2024;
- e. A Notice To Leave, dated 3rd April 2024, was served timeously and correctly;

- f. A section 11 notice was served on the local authority;
- g. The Application was served on the Respondent by Sheriff Officer on 23rd August 2024;
- h. The Respondent has been in arrears for more than three consecutive months;
- i. The respondent has made no attempt to contact the Applicant;
- j. The Respondent has not responded to the Tribunal application;
- k. The Applicant's only source of income is the 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 statement. 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 given that the arrears equated to nine months of missed rent payments, the rent was the Applicant’s only source of income and that the Respondent had not responded to the Application 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

Legal Member/Chair

26 September 2024

Date