



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/24/2239

Re: Property at 85 Russel Drive, Ayr, KA8 8JL (“the Property”)

Parties:

Mr Robert Lindsay, 4 Howard Street, Kilmarnock, KA1 2BP (“the Applicant”)

Mr Jamie Sargent, 85 Russel Drive, Ayr, KA8 8JL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

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 20 March 2023;
 - (ii) Notice to Leave dated 8 February 2024 citing ground 12, together with proof of service on the Respondent by recorded delivery mail on that same date;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Ayrshire Council together with proof of service by email; and

(iv) Rent Statement.

2. By Notice of Acceptance of Application dated 29 May 2024 a Legal Member of the Tribunal 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 on 11 October 2024. 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. No further representations were received from either party.

Case Management Discussion

3. The Case Management Discussion took place on 11 October 2024 by teleconference. The Applicant was represented by Mr Kelvin Walker of Kilpatrick and Walker Solicitors. The Respondent was not present. The Tribunal noted that the Respondent had received proper notification of the Case Management Discussion in terms of Rule 17(2) of the Rules of Procedure and had been given the opportunity to attend or make written representations. The Tribunal therefore determined to proceed with the Case Management Discussion in his absence.
4. The Tribunal asked Mr Walker to explain the background to the application and the order he was seeking from the Tribunal.
5. Mr Walker advised that the Applicant sought an eviction order. There had been no recent contact from the Respondent and the Applicant suspected he had in fact abandoned the property. No rent had been paid since August last year. The arrears had now increased to £6175. Mr Walker advised that the Respondent worked full time for a local authority therefore there was no entitlement to benefits that the Applicant was aware of. Nothing had ever been received by the Applicant in this regard.
6. With regard to the rent arrears pre-action protocol, Mr Walker confirmed that the Applicant's agent had emailed the Respondent on 31st January 2024 to inform him of his arrears and offered to work towards a payment plan with him. The agent had also provided details of advice agencies, including Shelter and the Citizens Advice Bureau. The Applicant's agent had emailed the Respondent again in May 2024 in similar terms. There had been no contact from the Respondent. In response to questions from the Tribunal Mr Walker advised that the Applicant was not aware of any disabilities or health issues on the Respondent's part. The Respondent had previously resided in the property with his partner and young child, however he had advised the Applicant's agent that they were no longer residing with him and he was the sole occupant of the property.

Relevant Legislation

7. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

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 (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.

Findings in Fact

8. The parties entered into a Private Residential Tenancy Agreement dated 20 March 2023.
9. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

10. In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £475 per calendar month.
11. On 8 February 2024 the Applicant delivered a Notice to Leave to the Respondent at the property by recorded delivery mail.
12. 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 10 March 2024.
13. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
14. As at the date of service of the Notice to Leave arrears in the sum of £2250 were outstanding.
15. As at the date of the Case Management Discussion arrears in the sum of £6175 were outstanding.
16. The last payment to the rent account by the Respondent was a payment of £483 on 25 August 2023.
17. The Applicant's letting agent wrote to the Respondent by email in January and May 2024 informing him of the rent arrears, offering to enter into a payment plan, and providing him with details of advice agencies. The Respondent did not provide any response to the emails.
18. The Respondent is employed with the local authority.
19. The Respondent resides in the property alone. The Respondent has a child who resides elsewhere with his former partner.
20. The Respondent has no known disabilities or health issues.
21. The arrears are not due to any failure or delay in payment of a relevant benefit.

Reasons for Decision

22. 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. The Respondent had not sought to put forward any defence to the application, nor challenge any of the application paperwork. There were therefore no issues to be resolved that would require a hearing to be fixed.
23. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's 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.
24. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.

25. The Tribunal accepted, based on the rent statement submitted by the Applicant and Mr Walker's submissions at the Case Management Discussion, that arrears of £2250 were outstanding when the Notice to Leave was served and had increased to £6175 as at the date of the Case Management Discussion. There was nothing before the Tribunal to contradict the Applicant's evidence in this regard. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent.
26. The Tribunal then considered the question of reasonableness. The Tribunal accepted that the arrears in this case were exceptionally high, equating to approximately thirteen months rent. The Respondent had paid nothing in over a year and had provided no explanation for the lack of rent payments. It appeared that the Respondent was in employment and would therefore be receiving a steady income.
27. The Tribunal also took into account the Respondent's personal circumstances, noting that he was the sole occupant of the property and did not have any known disabilities or health issues. The Tribunal noted that he had a child who did not reside with him and would not therefore be at risk of homelessness, were the Tribunal to make an eviction order.
28. With regard to paragraph (4) of ground 12, the Tribunal was satisfied, based on the submissions from Mr Walker, that the arrears were not due, in whole or in part, to any delay in the payment of a relevant benefit. The Respondent had no known entitlement to benefits as he was believed to be in employment, and there was no information from him to the contrary. The Tribunal also took into account the terms of the emails that had been sent from the Applicant's agent to the Respondent in compliance with the pre-action protocol.
29. Taking the above factors into account, the Tribunal concluded that there were no relevant factors that would outweigh the reasonableness of making an eviction order in this case. The Tribunal was therefore satisfied that ground 12 had been met.
30. Accordingly the Tribunal determined to make an eviction order. 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.

Ruth O'Hare

11 October 2024

Legal Member/Chair

Date