



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/24/2312

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

Parties:

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Melissa Napier, Scot Napier, 5 Mavisbank Grange, Loanhead, EH20 9SZ (“the Applicants”) per their agents Gilson Gray, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicants’ Agents”)

Kelsey Paula Harvey, 2/L 58 Main Street, Stobswell, Dundee, DD3 7HN (“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 21 May 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 April 2021 showing a monthly rent of £450.00;
 - ii) copy rent increase notice effective from 1 September 2023 increasing the rent to £463.00;
 - iii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 26 February 2024 with proof of Sheriff Officer service;
 - iv) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council being the relevant local authority;
 - v) copy rent statement showing arrears of £1,603.00 due and owing at 1 February 2024, being in excess of three consecutive months and
 - vi) pre-application letters to the Respondent.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 16 October 2024 at 14.00 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 14.00 by telephone. The Applicant was not present and was represented by Mr. Gray of the Applicant's Agents. The Respondent was not present and was not represented. She did not submit written representations.

5. Mr. Gray confirmed that the Applicant sought an eviction Order. He advised that although the Respondent had been made some payments, she had not made sufficient payment to cover the monthly rent and so arrears had increased. The last payment made by the Respondent was £165.00 on 28 August 2024 and the amount due had now risen to £2,342.00. Mr. Gray stated that the Respondent was reluctant to make contact by telephone or email and preferred to use text messages. He stated that, when the Application was raised, the Respondent messaged stating that she realised she had to vacate the Property and had obtained alternative accommodation from the end of October. She indicated that she intended to make arrangements to pay the rent due.

6. With regard to the personal circumstances of the Parties, Mr. Gray advised that Property is the Applicants' only rental property and that they intended to sell it to fund their retirement next year. Mr. Gray stated that the Applicants have a mortgage secured against the Property and are funding the monthly payments of £155.00 from their own earnings. With regard to the Respondent, Mr. Gray advised that as far as he is aware, she had been employed but is now in receipt of Universal Credit. He confirmed that no applications for

housing costs direct have been made Mr. Gray advised that the Respondent remains residing in the Property on her own and is in employment.

Issue for the Tribunal

7. 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.”
8. 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

9. 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 1 April 2021;
 - ii) The current monthly rent is £463.00;
 - iii) There are current arrears of £2,342.00 which amounts to 5 months' rent;
 - iv) The Respondent has not made any payments of full rent since around August 2023;
 - v) A valid Notice to Leave was issued by the Applicants to the Respondent at which time the Respondent was in rent arrears for three or more consecutive months;
 - vi) PAR letters were issued on behalf of the Applicants to the Respondent;
 - vii) The Applicants have only one rental property;
 - viii) The Applicants have a mortgage secured against the Property;
 - ix) The Applicants are funding the mortgage payments from their own earnings and
 - x) The Respondent lives alone and is in receipt of Universal Credit.

Decision and Reasons for Decision

10. 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.
11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. 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.
13. The Tribunal, having no evidence in respect of state benefits for housing costs, 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.

14. The Tribunal found 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.
15. The Tribunal then had regard to the circumstances of the Parties.
16. 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.
17. The Tribunal then looked to balance the rights and interests of both parties.
18. The Tribunal accepted that the Applicants are not a professional landlords and that they have mortgage commitments in respect of the Property. The Tribunal took the view that the Applicants are entitled to rely on the rent to fund the mortgage commitments, as part of their regular income and in order to meet the running costs of the Property.
19. The Tribunal had regard to the fact that the Respondent had not been able to meet the full rent payment for some months and accepts that there are considerable arrears. The Tribunal noted that the Respondent appears to have secured alternative accommodation. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
20. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
21. 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