



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/24/1883

Re: Property at 38 Hill Street, Dunoon, PA23 7AT (“the Property”)

Parties:

Mr Scott Mackellar, 123 Hillside Road, Paisley, Renfrewshire, PA2 6UA (“the Applicant”)

Miss Nicola Carlin, 38 Hill Street, Dunoon, PA23 7AT (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused.

Statement of Reasons

1. This Application called for its Case Management Discussion by teleconference on 3 October 2024. The Applicant was present, and was also represented by Mr McTigue. The Respondent was not present or represented.
2. In this Application, the Applicant seeks an eviction order. He contends that he is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy Agreement. The rent under that agreement is £675 per month. The Respondent initially paid the rent but, in July 2023, contacted the Applicant to advise that there had been a change to her benefits and seeking to negotiate a reduce rent. The Applicant refused to reduce the rent. Thereafter, the Respondent made payments towards her rent on a monthly basis, but had a shortfall, all as more particularly set out in the rent arrears schedule produced with the Application. The Respondent has been in arrears of rent since July 2023. By Notice to Leave dated 16 February

2024, the Applicant gave Notice to Leave the Property to the Respondent, relying upon Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, which is that the Respondent has been in rent arrears for a continuous period of three calendar months. The Respondent has not removed from the Property, and has not paid the arrears. The arrears at the date of raising the Application were £1,281.67.

3. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), the Tribunal may do anything at a Case Management Discussion that it may do at a Hearing, including make a Decision. In terms of Rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision, including the need to avoid unnecessary delay.
4. The Respondent has received notice of the CMD but has chosen not to lodge written representations or attend the CMD. The Tribunal therefore considers that she does not wish to dispute the assertions of fact contained in the Application and supporting documents, as more particularly referred to in paragraph 2 above.
5. The only ground for eviction relied upon by the Applicant is Ground 12, which is in the following terms:-

“12 Rent arrears

- (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 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.”
6. In this case, the Respondent did not take steps to dispute that she is in rent arrears, or that she was in rent arrears for a period of three consecutive calendar months. The Tribunal was therefore satisfied that the requirement of subsection (3)(a) of Ground 12 was satisfied. The only question for the Tribunal to determine was whether it was reasonable to grant the eviction order. The CMD therefore proceeded for the purpose of hearing evidence and submissions pertinent to that question, and in the absence of the Respondent.

Evidence – Scott Mackellar (the Applicant)

7. The Applicant confirmed that the Property is a ground floor flat with three bedrooms. The Respondent lives at the Property with her three young children. The Applicant was unaware of the ages of the children, but was confident that all three were under the age of 10. He was unable to say whether all of the children were school age, but he believed that at least two were.
8. The Applicant advised that the Respondent was not in employment at the start of the tenancy, but he was unable to say whether she was in employment now. He was unaware of whether the Respondent accessed any local specialist services.
9. The Applicant advised that the Respondent was, to his knowledge, in receipt of some form of housing benefit. He understood that benefit to now be in the sum of £550. The benefit was paid to the Respondent, who in turn made payment to the Applicant towards the rent by bank transfer. The sum being paid did not cover the shortfall, and the rent arrears were accruing. Correspondence had been written to the Respondent seeking payment of the arrears and shortfall, but no response had been received. The Applicant had not spoken to the Respondent in some time. No proceedings for payment had been raised against the Respondent.
10. The Respondent’s financial obligations were guaranteed by a Thomas Carlin. The Applicant confirmed that Thomas Carlin is the brother of the Respondent.

The Applicant advised that he wrote to Mr Carlin in February 2024 seeking proposals to pay the rent arrears, but did not receive a response. No proceedings for payment had been raised against Mr Carlin.

11. The Applicant confirmed that he has outstanding mortgage lending secured over the Property on a “buy to let” basis. The mortgage is interest only. It has a contractual monthly payment of £96.51. Other than premiums for landlord insurance, the Applicant has no other financial liabilities in respect of the Property.

Submissions

12. On behalf of the Applicant, Mr McTigue submitted that it was reasonable to grant the eviction order. The submission was simple: the Respondent was in rent arrears, was unable to afford rent at the contractually agreed rate, and arrears would only continue to accrue.

Discussion

13. In this case, there is no dispute about the evidence. The Respondent did not object to the content of the Application, and chose not to attend the CMD to challenge what was said by the Applicant. The Tribunal therefore accepted the Applicant’s evidence.
14. The function of the Tribunal in this case is to determine whether it is reasonable to grant an eviction order in circumstances where the Respondent has been in rent arrears for a period in excess of three consecutive calendar months. The judicial role in assessing reasonableness was considered by Lord Greene MR in *Cumming v Danson*, [1942] 2 All ER 653, at page 655:-

“[I]n considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”

15. As a starting point, the Tribunal has given consideration to the likely impact on the Respondent and her children of granting the eviction order. To do so would make them homeless. It will interfere with the schooling of those children who are of school age. It will cause considerable stress and upset to the whole family unit. Whilst the Respondent would likely be treated with some priority for rehousing by the local authority, that does not necessarily mean that rehousing will be quick or straightforward. It could result in the provision of temporary accommodation that is not entirely suitable for the family unit.

16. Turning to the impact on the Applicant, there is no suggestion that refusing to grant the order will have any meaningful impact. The shortfall between the contractual rent and the Respondent's benefit is £125. However, even with that shortfall, the Applicant continues to make a profit of approximately £400-£450 per calendar month from his letting to the Respondent. The rent arrears at the point of raising the application were a sum equivalent to less than two months' rent. Even with a further five months' shortfall, the rent arrears amount to less than three months' rent. Put simply, the Applicant is not suffering any real hardship, and continues to make a substantial profit from the tenancy.
17. That being said, the Respondent agreed to pay rent at the rate of £675 per calendar month. That is her obligation. She has not done so, and has indicated that she is unable to do so. She is not responding to attempts to correspond with her. It is unclear what steps she has taken to obtain debt, housing or legal advice in respect of matters. The Tribunal observed that the rent is less than the capped value for housing benefit, which suggests that there may be scope for the Respondent to, with appropriate advice, seek additional housing assistance.
18. This leads on to the final matter which the Tribunal thought relevant, which was the Applicant's apparent attitude towards eviction. He did not raise proceedings to recover payment of arrears from the Respondent. Nor has the Applicant raised proceedings, or made any concerted effort, to recover payment from the guarantor. The Tribunal considered this to be reflective of a view by the Applicant that he did not want the hassle of pursuing his tenant, or her guarantor, for payment. Rather, it suited him better to rely on her non-payment as a way to remove her, because it would be easier to re-let the Property to a new tenant who paid than to recover payment here. That is not, in the Tribunal's view, a reasonable basis upon which to proceed. Proceedings for eviction where there are, in particular, low value arrears accruing gradually should be an action of last resort, reflective of an inability to recover payment by other means. The Applicant has not attempted other means to recover payment, notwithstanding that he has two options to pursue.
19. Having considered all of the above reasons, the Tribunal determined that it was not reasonable to grant the eviction order in this Application. The likely negative impact on the Respondent of granting the order far outweighs the likely negative impact on the Applicant of refusing it. The Applicant has other remedies available to him to recover the outstanding payments, and encourage compliance by the Respondent (or, alternatively, her guarantor) with her financial obligations under the tenancy agreement. The pursuit of those remedies will not result in significant financial harm to the Applicant, who continues to derive substantial financial benefit from this letting.
20. The Tribunal unanimously refused the order.

21. As a final observation, the Tribunal would encourage the Respondent to take professional legal, housing and debt advice, and engage with the Applicant to seek to agree a payment arrangement that will both clear the existing arrears and address the regular shortfall. If she does not do so, there will likely come a time where the level of arrears is intolerably high, in which case the Applicant will inevitably seek this order again.

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.

Andrew Upton

Legal Member/Chair

Date