



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/1558

Re: Property at 23D McCalls Avenue, Ayr, KA8 9AA (“the Property”)

Parties:

Mrs Linda Wylie, 4 Darley Place, Troon, KA10 6JQ (“the Applicant”)

Mr Lee Kane, 23D McCalls Avenue, Ayr, KA8 9AA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ann Moore (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application lodged on 5 April 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act (rent arrears for three or more consecutive months). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a Rent Statement showing the balance of rent arrears owing as over £5,000 as at the date of application.
2. Following initial procedure, on 3 July 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 4 October 2024, Sheriff Officers served a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 11 November 2024. The Respondent was invited to lodge written representations but no representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

4. The CMD took place on 11 November 2024 at 10am by telephone conference call. Only the Applicant, Mrs Linda Wylie, was present. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late but he did not do so.
5. After introductions and introductory remarks by the Legal Member, Mrs Wylie was asked if she had had any recent contact with the Respondent or was aware of his intentions regarding the property. Mrs Wylie explained that she had not had any direct communications with the Respondent since she served notice in February 2024. She has, however, had some contact with the Respondent’s mother. Mrs Wylie advised her previously of the date and time of today’s hearing and also texted her recently to remind her. The Respondent’s mother said that the Respondent did not know anything about this, even although this contradicts what she has said previously. Mrs Wylie has not visited the Property herself recently but believes the Respondent is still in occupation as she is still receiving payments via his Universal Credit.
6. Mrs Wylie explained the background to the tenancy and her application to the Tribunal. She stated that she had originally rented the flat to the Respondent’s mother who had lived there with the Respondent for around 6 months, before notifying Mrs Wylie that she intended to move out and leave the Respondent in the flat. The tenancy was subsequently put into his name. Mrs Wylie confirmed that the Respondent is in his 20s and lives alone. She has not met him more than around six times. It was difficult to arrange with him for her to get in to do routine checks, etc so she has just been leaving well alone. She does not know what his intentions are about housing or if he has made any application to the local authority for social housing as he does not really engage with her at all now. The Respondent has been in arrears with his rent for some considerable time and the current arrears are £4,970. He has been in and out of jobs and on Universal Credit much of the time. However, the Universal Credit did not cover all of his rent, although his rent is quite low, as it only covered a one-bedroom flat, whereas this has two bedrooms. His Universal Credit stopped and started and with the shortfalls in rent, the arrears kept accruing until they reached over £5,000. At some point, Universal Credit started covering his whole rent, plus £40 towards the arrears, so the arrears have reduced very slightly but are still high. Mrs Wylie previously tried to engage with the Respondent regarding the arrears and held off serving notice for a long time, as he would make excuses and promises to pay, which he then did not stick to. When she finally decided to serve notice, this was because the arrears had got so high and at that time, she had not received any top-up payments from the Respondent towards the

rent for three full months. Mrs Wylie explained that it is now her intention to sell the Property when she recovers possession as she is in her 70s and no longer wants to rent out. This is her only rental property. She confirmed that it had originally been for her daughter who was attending university at the time. Mrs Wylie then made the decision to let it out but it has been so much trouble that she no longer wants to do so.

7. The Tribunal adjourned briefly to the application in private. On re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought on the basis that the eviction ground was met, that it was reasonable to grant the order in all the circumstances and that there has been no opposition from the Respondent. There was brief discussion regarding the procedure which will now follow and Mrs Wylie was thanked for her attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 6 July 2020.
3. The rent in terms of the tenancy was £375 per calendar month.
4. There is a history of rent arrears and erratic payments.
5. When the Notice to Leave was served, the rent account had been in arrears for more than 3 consecutive months and rent arrears exceeded £5,000.
6. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email on 28 February 2024.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 1 April 2024.
8. The Tribunal Application was submitted on 5 April 2024.
9. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
10. The Respondent has not engaged with the Applicant since notice was served in February 2024.
11. The Respondent has remained in possession of the Property.
12. The Respondent is currently in receipt of Universal Credit and the full monthly rental payments are presently covered by Universal Credit.
13. Rent arrears currently amount to in or around £4,970.

14. The Applicant wishes to recover possession of the Property due to the level of rent arrears and no longer wishes to let the Property out.
15. The Respondent has not lodged any written representations and did not attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to the background papers including the application and supporting documentation and oral representations made by the Applicant at the CMD.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) which is as follows:-

“Rent arrears

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.”

4. The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances, as outlined above, to grant the eviction order sought. The rent account had been continuously in arrears for a considerable period of time and the current arrears are significant, amounting to just under £5,000. The Tribunal was satisfied that the Applicant requires to recover the Property without further delay as the present situation was unsustainable from her financial point of view and she no longer wants to rent out the Property. The Applicant is in her 70s and intends to sell the Property when she recovers possession. The Applicant had followed the pre-action protocol to a large extent by previously trying to engage with, and issuing emails and messages to the Respondent regarding the rent arrears and seeking to enter into payment arrangements. The Respondent had made numerous excuses and promises to pay but had not adhered to these. He had not engaged at all with the Applicant since Notice to Leave was served in February 2024. The Tribunal noted that the Property is a two-bedroom flat which the Respondent occupies on his own, that he in his 20s and appears to have an erratic employment history. Although the Respondent is currently in receipt of Universal Credit which covers his full monthly rent payments plus a small additional monthly payment towards the rent arrears, the Tribunal considered that, given the level of arrears and the background to the application, it was reasonable for an eviction order to be granted. The Respondent had not engaged in the Tribunal process, lodged any written representations nor attended the CMD. There was no information before the Tribunal contradicting the information presented by the Applicant. The Tribunal accordingly

determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N.Weir

Legal Member

11 November 2024

Date