



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2250

Re: Property at 83 Gartloch Way, Gartcosh, G69 8FD (“the Property”)

Parties:

Ms Angela Boyle, 5/1 20 Mathieson Terrace, Glasgow, G5 0UT (“the Applicant”)

Mr Mark Watson, 83 Gartloch Way, Gartcosh, G69 8FD (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of schedule 3 of the 2016 Act. A copy of the application was served on the Respondent and the parties were advised that a CMD would take place on 29 October 2024 at 2pm. Prior to the CMD the Applicant lodged a response to a direction which had been issued by the Tribunal. This required the Applicant to re-issue the section 11 notice as this appeared to have been sent to the wrong Local Authority. On the morning of the CMD, the Applicant lodged an updated rent statement and evidence of compliance with the Rent Arrears Pre Action-Protocol.
2. The CMD took place on 29 October 2024. The Applicant participated and was represented by Mrs Young. The Respondent did not participate and was not represented.

Summary of Discussion at CMD

3. Ms Young advised the Tribunal that the Respondent remains in occupation of the property. However, although they have made extensive efforts to contact him, the Respondent has not engaged with them since December 2023. There have been no payments to the rent account since that time and the arrears are now £8500.
4. The Legal Member of the Tribunal noted that a further section 11 notice had been lodged with evidence that it had been sent to North Lanarkshire Council. The previous notice had been sent to Glasgow City Council. It appears that the former is the correct Local Authority. The Tribunal noted that the only other issue with the paperwork was the absence of pre action letters and an updated rent statement which had now been provided.
5. Ms Young told the Tribunal that the Respondent has been the tenant of the property since September 2023. They carried out the usual checks when he applied for the property and his reference and credit rating were in order. He also provided evidence that he was in employment with an annual salary of £65000. He stopped paying rent in December 2023. The reason for this is not known as he has failed to respond to calls and correspondence. Mrs Boyle told the Tribunal that she went to the property after expiry of the notice to leave. There was no answer at the door, and she went in. The Respondent was not there but his mum was in the house with a dog. She denied all knowledge of the rent arrears. Mrs Boyle also told the Tribunal that she has had complaints from a neighbour that the Respondent's mum, a child and other people appear to be staying at the property from time to time. There have also been complaints about the condition of the garden. She told the Tribunal that the property only has one bedroom. She confirmed that the rent arrears are having an adverse impact on her as she depends upon the rental income. She has one other rental property. Ms Young advised the tribunal that the PARS letters were issued to the Respondent. One was sent by recorded delivery, one was hand delivered and one was sent by email.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent is due to pay rent at the rate of £850 per month.
9. The Respondent has been in arrears of rent since 8 January 2024. No payments have been made to the rent account since 8 December 2023.
10. The Respondent currently owes the sum of £8500 in unpaid rent.

11. The Respondent was in employment at the start of the tenancy.
12. The Applicant served a Notice to leave on the Respondent on 8 April 2024.
13. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
14. The Applicant has received complaints from nearby resident about the condition of the property and the number of people who appear to be staying at the property.

Reasons for Decision

15. The application was submitted with a Notice to Leave dated 8 April 2024, together with a copy email which establishes that the Notice was sent to the Respondent on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.
16. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted two Section 11 Notices which were sent to two different Local Authorities. This was because the Tribunal issued a direction indicating that the notice lodged with the application had been sent to the wrong Council and requiring the Applicant to rectify this mistake. However, it appears that this was an error on the part of the Tribunal. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
17. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
18. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(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 in 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."
19. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit.

The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.

20. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent currently owes the sum of £8500 and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Ground 12 is therefore established.
21. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted letters which contain the information required in terms of the protocol. The representative confirmed that these letters had been sent by post, email and hand delivered.
 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent was in employment at the start of the tenancy and has not advised the Applicant of a change of circumstances, despite extensive efforts by them to speak to him about the arrears.
 - (c) The arrears are substantial, and the Respondent has made no rental payments for ten months.
 - (d) The Applicant has received complaints from a nearby resident about the condition of the garden at the property. She has also been told that other people appear to be living at the property from time to time although it only has one bedroom, and the Respondent is supposed to be living there alone.
 - (e) The rent arrears are causing financial difficulty to the Applicant as she relies on the rental income.
22. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 21, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

23. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

Date: 29 October 2024