



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”)

Chamber Ref: FTS/HPC/EV/24/1460

Re: Property at 32b Miners Walk, Dalkeith, EH22 2AL (“the Property”)

Parties:

Legge Associates Limited, Annfield House, Eskbank Toll, Dalkeith, EH22 3DY (“the Applicant”)

Mr Gavin Fennessey, 32b Miners Walk, Dalkeith, EH22 2AL (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent. The Tribunal delayed execution of the order until 13 January 2025.

Background

1. An application was received from the Applicant on 29 March 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). The application sought recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form in respect of the application were:
 - (i) Copy private residential tenancy agreement between the parties, which commenced on 25 June 2020.

- (ii) Copy Notice to Leave dated 12 February 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 14 March 2024.
 - (iii) Proof of sending of the Notice to Leave to the Respondent by email dated 12 February 2024.
 - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Midlothian Council, together with proof of sending by email on 28 March 2024.
 - (v) Copy rent statement showing arrears of rent due by the Respondent to be £2075 as at 18 January 2024.
 - (vi) Copies of pre-action requirements letters sent by the Applicant to the Respondent on 26 September and 16 October 2023. and 2 February 2024, together with proof of sending by recorded delivery.
 - (vii) Further information including a timeline of events and various text messages and emails between the parties regarding the rent arrears, the Respondent's behaviour and a broken window at the property.
3. The application was accepted on 23 April 2024.
4. Further written representations was received from the Applicant on 19 August 2024. These included an updated rent statement which showed that the outstanding rent arrears remained at £2075 as at 26 July 2024.
5. A case management discussion (CMD) took place by teleconference call on 29 August 2024, to consider both the present application and the accompanying civil proceedings application (reference FTS/HPC/CV/1461) for a payment order in respect of the rent arrears. Mr Symon Legge, a Director of the Applicant company, was present on the teleconference call and represented the Applicant. The Respondent was present on the teleconference call and represented himself.
6. Having heard from both parties, the Tribunal decided to adjourn the matter to another CMD, to give the Respondent the opportunity to seek advice regarding his financial situation, as well as the eviction proceedings and the application for a payment order.
7. The adjourned CMD was scheduled for 4 November 2024. No further written representations were received from either party prior to the CMD.

The case management discussion

8. The adjourned CMD was held by teleconference call on 4 November 2024 to consider both this application and the accompanying civil proceedings

application. Both Mr Legge and the Respondent were present on the teleconference call.

The Applicant's submissions

9. Mr Legge asked the Tribunal to grant an eviction order to the Applicant under ground 12 (rent arrears). He confirmed that the outstanding rent arrears remained at the same level as in the original application, namely £2075. The Respondent's rent was still being paid in full via Universal Credit, as had been the case since January 2024.
10. Addressing the issue of reasonableness, Mr Legge told the Tribunal that there had been a breakdown in the landlord - tenant relationship, and that both parties needed a clean break. He had spoken to the Respondent about a year ago regarding the fact that he was unable to afford the rent for the property. The Respondent had spoken to Midlothian Council about the possibility of obtaining council accommodation, which would be the best solution. The council would not assist him with this until an eviction order had been granted, however.

The Respondent's submissions

11. The Respondent told the Tribunal that his situation had not really changed since the first CMD. He was still unwell and had been signed off from work for a few months by his doctor. He was still in receipt of Universal Credit.
12. He had had difficulty in obtaining advice from the CAB, but understood that he would be unable to obtain any further financial support.
13. The ongoing eviction proceedings had taken their toll on his physical and mental health, and he just wanted it all to be over with as soon as possible. He said that he understood that Mr Legge was also under financial pressure and just wanted to get the property back. He was also aware that the Council had said it was unable to help him until an eviction order had been granted. He did not therefore wish to oppose the eviction application.

Findings in fact

14. The Tribunal made the following findings in fact:
 - The Applicant owns the property and is the registered landlord for the property.
 - There is a private residential tenancy in place between the parties, which commenced on 25 June 2020.
 - The rent due under the tenancy agreement is £775 per month.

- The Respondent has been in rent arrears since October 2022. He owed the Applicant rent arrears totalling £2075 as at 4 November 2024.
- The Respondent's rent has been paid in full via Universal Credit since January 2024.
- The Notice to Leave was validly served on the Respondent by email on 12 February 2024.
- The Respondent was in rent arrears for three or more consecutive months' rent as at both the date the Notice to Leave was given to him and at the date of the continued CMD.
- The Applicant has complied with the pre-action requirements for private residential tenancies as set out in regulation 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
- The Respondent is currently living alone in the property.

Reasons for decision

15. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.
16. The Tribunal firstly considered whether the legal requirements of ground 12, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 12 states:

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 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,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(5) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

17. Having had regard to all of the evidence before it, the Tribunal was satisfied that the Respondent had been in rent arrears for three or more consecutive months.

18. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case. Firstly, it considered the matters in paragraph 4 of Ground 12 as set out above. The Tribunal was satisfied that the Applicant had complied with the pre-action protocol for private residential tenancies as set out in regulation 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was also satisfied that the Respondent was not in arrears over the period in question wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit.

19. The Tribunal took into account the Applicant's circumstances. The Respondent's ongoing rent arrears were having a financial impact on the Applicant. Mr Legge appeared to have been reasonable in his dealings with the

Respondent. He had given the Respondent the opportunity to repay the arrears and had tried to resolve matters prior to making the application. He had not served a Notice to Leave on the Respondent until he had been in arrears for around 15 months. He had told the Tribunal at the first CMD that he had twice contacted the Department of Work and Pensions to enquire about deductions from the Respondent's Universal Credit towards his rent arrears, but had received no response.

20. The Tribunal then took into account the Respondent's circumstances. At the first CMD, the Respondent had told the tribunal that he had had a lot of bad luck over the past few years. His girlfriend had left him and his father had died last year. He had got into arrears with his rent when he had been off work for a time because he had hurt his back. He was currently suffering from anxiety and depression, and was unable to work. He was in receipt of Universal Credit of £295 per month. He accepted that he owed the outstanding arrears and expressed regret about the circumstances in which he found himself.
21. The Respondent lives alone in the property, which is a two bedroomed flat. His 19 year old daughter was living with him for a time, but had gone back home to Ireland around a month before the first CMD.
22. When asked by the Tribunal at the first CMD whether he had asked for deductions to be made from his Universal Credit towards his rent arrears, the Respondent said that he was unaware that he could do this. He said that this would be difficult however, given his current level of income.
23. Having carefully considered the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It noted that the Respondent's rent arrears were not increasing as his rent was currently being paid in full via Universal, Credit. The level of rent arrears due has remained unchanged at £2075 since January 2024.
24. It was clear, however, that the ongoing situation was contributing to the Respondent's health problems. There was little prospect of his being able to repay the arrears at the present time, and he appeared to accept that he would need to leave the property. The Tribunal gave particular weight to the fact that the Respondent did not wish to oppose the application and accepted that he would be unable to obtain council housing until an eviction order was granted,
25. Before deciding to grant the order, the tribunal sought the views of both parties on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, given the upcoming Christmas period.

26. Mr Legge said that he had no objection to this, so long as the Respondent's ongoing rent continued to be paid, and the situation did not continue for too long into the New Year. The Respondent said that this would make things easier for him, as he did not want to be homeless over the Christmas period.

27. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant. The Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order until after the festive period.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delays execution of the order until 13 January 2025.

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.

Sarah O'Neill

4/11/24

Legal Member/Chair

Date