



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/24/1588

Re: Property at 42 2F1 East Main Street, Broxburn, EH52 5AE (“the Property”)

Parties:

Aitchison and Jones Limited, 4 Lothian Street, Dalkeith, EH22 1DS (“the Applicant”)

Mr Paul Fegan, 42 2F1 East Main Street, Broxburn, EH52 5AE (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 8th April 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 1A and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Notice to Leave dated 10th January 2024;
 - ii. Section 11 Notice and proof of service;
 - iii. Rent Statement.
3. After requests from the Tribunal the Applicant’s agent also lodged:

- iv. Copy Private Residential Tenancy Agreement showing a commencement date of 29th May 2020 and a rent of £550 per month;
 - v. Copy email dated 10th January 2024 to the Respondent serving the Notice to Leave;
 - vi. Emails which purported to be Pre Action protocol letters.
4. The Application was served on the Respondent by Sheriff Officers on 21st September 2024.
 5. On 8th October 2024 the Applicant's agent lodged an up to date rent statement.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Gray of Professional Property Letting Limited. There was no attendance by the Respondent or by any representative on his behalf.
7. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
8. Miss Gray sought an order for eviction in terms of grounds 1A and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016.
9. The Tribunal pointed out that there was not sufficient information before the Tribunal for it to make a decision at the CMD in relation to Ground 1A. There was a question about whether the Applicant had title to sell, and there was not sufficient information in relation to financial hardship. A Hearing would be required. Miss Gray decided to proceed on Ground 12 alone.
10. Miss Gray said that the Respondent had not paid rent since 2nd September 2023 and was now over a year in arrears. On that basis the Tribunal were satisfied that the ground had been met.
11. Miss Gray addressed the Tribunal on reasonableness. She said that there had been hundred of emails sent by her organisation to the respondent. He had not responded. He was only willing to correspond in relation to matters other than the rent, for example he alleged that he had fallen down the stairs and injured himself and threatened to make a claim. Miss Gray said that the initial emails would have dealt with giving advice about contacting alternative providers and applying for benefits. The Applicant had made an application to Universal Credit to have it paid direct, but Universal Credit had replied to say that they could not do so.

12. Miss Gray said that the Respondent had reported that his door had been kicked in. He refused to give a police reference number to allow the Applicant to claim on insurance. The Applicant repaired the door at a cost of £2500, but it had taken five months for the Respondent to allow access for this. She said that the Applicant was supposed to live alone but a contractor had reported that a young man had opened the door and referred to himself as a carer. The Applicant is not aware of any disability and the property had not been adapted in any way. The Respondent has not made a claim for injury.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 29th May 2020;
- c. A Notice To Leave, dated 10th January 2024, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 21st September 2024;
- f. The rent has been in arrears for more than three consecutive months;
- g. The Respondent receives Universal Credit;
- h. The Applicant has sent numerous emails to the Respondent about the arrears;
- i. The Respondent should live alone in the property;
- j. The respondent is not known to have any disability;
- k. The property has not been adapted in any way in relation to a disability.

Reasons for Decision

13. It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

- (iii) sub-paragraph (3) is repealed,*
- (iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,*
- (h) in paragraph 10(2) (not occupying let property)—*
- (i) in the opening words, for “must” substitute “may”,*
- (ii) after paragraph (a), the word “and” is repealed,*
- (iii) after paragraph (b) insert “, and*
- “(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*
- (i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,*
- (j) in paragraph 13(2) (criminal behaviour)—*
- (i) in the opening words, for “must” substitute “may”,*
- (ii) after paragraph (a), the word “and” is repealed,*
- (iii) after paragraph (b) insert “, and*
- “(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*
- (k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—*
- “(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.*

14. The Tribunal now has to decide if it is reasonable to grant the eviction order.

15. The Tribunal were of the view in this case that the Applicant had established Ground 12 by provision of the rent statement. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal took in to consideration the level of arrears, the lack of contact from the Respondent about addressing the arrears and the Respondent’s personal circumstances as known to the Applicant and decided, particularly in light of the high level of arrears, that it was reasonable to grant the order.

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.

Alison J Kelly

21 October 2024

Legal Member/Chair

Date