



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/24/1849

Re: Property at 41 Mossbank Crescent, Motherwell, ML1 5TE (“the Property”)

Parties:

Mr Liam Murray, 3 Rodger Way, Motherwell, ML1 5GA (“the Applicant”)

Mr Brian Taylor, 41 Mossbank Crescent, Motherwell, ML1 5TE (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Notice to Leave dated 27 February 2024 citing ground 12, together with proof of service on the Respondent;
 - (ii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council together with proof of service by email;

- (iii) Copy reminder letter from the Applicant's representative to the Respondent dated 21 May 2024 and 28 May 2024; and
 - (iv) Rent statement.
2. The Applicant did not provide a copy of the tenancy agreement between the parties. By email of 3 June 2024, Empire Property, as representative for the Applicant ("the Applicant's representative"), advised the Tribunal that they did not have a copy of the document as they had taken over the management of the property when the tenant was already in situ.
 3. By Notice of Acceptance of Application dated 1 July 2024 a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 30 October 2024. A copy of the application paperwork together with notification of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 4. On 15 October 2024 the Tribunal received an email from Jordan Bird of Hamilton Citizens Advice Bureau ("CAB"). Mr Bird provided a written mandate from the Respondent authorising Mr Bird to represent him in the Tribunal proceedings and requested a copy of the application paperwork.

Case Management Discussion

5. The Case Management Discussion took place on 1 November 2024 by teleconference. Mr Gary Murray, an employee of the Applicant's representative, represented the Applicant. Mr Bird appeared on behalf of the Respondent. Neither the Applicant nor the Respondent were in attendance.
6. The Tribunal went on to explain the purpose of the Case Management Discussion to the parties and asked for their submissions on the application.
7. Mr Murray advised that the application was based on rent arrears and the Applicant was seeking an eviction order. The Respondent's last payment to the rent account was a payment of £250 on 12th February 2024. The arrears had since increased to £5030. The Respondent had a history of sporadic payments and had repeatedly failed to meet his rental obligations.
8. Mr Bird explained that the Respondent did not oppose the application and did not dispute the arrears were due. The Respondent was seeking debt advice from North Lanarkshire Council with a view to applying for sequestration. The Respondent did not therefore dispute the making of an eviction order, with the standard period for enforcement. The Respondent was in the process of moving out of the property and planned to return the keys on Monday 4th November. Mr Bird advised that the Respondent wished it noted that he had

not paid rent due to extensive disrepair at the property. However, Mr Bird reiterated that the Respondent was not opposing the application.

9. Mr Bird noted that there was reference in the paperwork to the tenancy having commenced in 2019. He wished to clarify that the Respondent had been residing in the property since 2017. Mr Murray advised that he had no information as to the commencement date of the tenancy as the Applicant's representative had taken over the management of the tenancy when the Respondent was already in situ. In response to questions from the Tribunal, Mr Bird confirmed that the tenancy had commenced after the provisions of the 2016 Act came into force. The Respondent therefore accepted that the tenancy between the parties was a private residential tenancy and the Applicant had sent him the correct notice prior to making the application to the Tribunal.
10. The Tribunal adjourned to deliberate, during which time the parties left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

11. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

1 - Meaning of private residential tenancy

1) *A tenancy is a private residential tenancy where—*

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies
(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

(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 subparagraph (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.

Findings in Fact

12. The Applicant let the property to the Respondent under a tenancy agreement which commenced on or after 1 December 2017.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
14. In terms of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £420 per month.
15. On 27 February 2024 the Applicant delivered a notice to leave to the Respondent.
16. The Notice to Leave included ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 30 March 2024.
17. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
18. As at the date of service of the Notice to Leave arrears in the sum of £3500 were outstanding.
19. As at the date of this decision arrears in the sum of £5030 are outstanding.
20. The Respondent has failed to make any payments to the rent account since 12 February 2024
21. The Respondent is in the process of moving out of the property.
22. The Respondent has sought debt advice with a view to applying for sequestration.
23. The Respondent does not object to the making of an eviction order.
24. The Applicant's representative sent letters dated 21 May 2024 and 28 May 2024 to the Respondent requesting payment of the rent and arrears.
25. The arrears are not due to any failure or delay in payment of a relevant benefit.

Reasons for Decision

26. The Tribunal determined that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties. There were no issues to be resolved that would require a hearing to be fixed. Mr Bird had been clear that the Respondent did not dispute the terms of the application.
27. Whilst the Tribunal did not have a copy of the tenancy agreement between the parties, it accepted based on the submissions from Mr Bird at the Case Management Discussion that the tenancy commenced in 2017 after the date upon which the provisions of section 1 of the 2016 Act came into force. Mr Murray had confirmed that he was unable to confirm the start date of the tenancy therefore the Tribunal accepted Mr Bird's position on this point. The Tribunal was therefore satisfied that the tenancy between the parties was a private residential tenancy and that the application could be entertained based on the notice to leave that had been produced with the application, which complied with the provisions of section 62 of the 2016 Act.
28. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
29. The Tribunal accepted, based on the documents submitted by the Applicant and the verbal submissions from the parties, that rent arrears of £3500 were outstanding when the notice to leave was sent to the Respondent and that figure had increased to £5030 as at the date of the Case Management Discussion. The Respondent did not dispute this. The Tribunal was therefore satisfied that the Respondent had been in arrears for three or more consecutive months.
30. The Tribunal then considered the question of reasonableness.
31. The Tribunal gave significant weight to the fact that the Respondent had no objection to the making of an eviction order, and intended on vacating the property in the coming days. The Tribunal also gave great weight to the fact that the rent arrears were significant, and that the Respondent had been in arrears over a prolonged period. The rent statement produced by the Applicant's representative illustrated a history of sporadic payments by the Respondent and repeated failures on his part to meet the rent due. There was no suggestion from Mr Bird that the arrears were a result of any delay or failure in the payment of a relevant benefit. Whilst Mr Bird had stated that the Respondent had not paid rent because of disrepair at the property, he had submitted no evidence of this and the Tribunal was therefore unable to make any findings on this matter.
32. The Tribunal noted that the correspondence sent to the Respondent by the Applicant's representative did not contain details of advice agencies and did not indicate any desire on the Applicant's part to enter into a reasonable payment plan, instead requesting payment of the arrears in full. Both are clear

requirements of the rent arrears pre-action protocol. However, it was evident that the Respondent had been proactive in seeking advice himself by virtue of Mr Bird's attendance at the Case Management Discussion. The Tribunal also noted that he was taking advice regarding his own sequestration, which suggested he was not in a position to agree any repayment plan for the arrears. The Tribunal did not therefore give much weight to the fact that the Applicant had failed to fully comply with the rent arrears pre-action protocol in its assessment of the reasonableness of making the eviction order. The Tribunal would however suggest that the Applicant's representative might wish to review their future correspondence to ensure all information relevant to the protocol is given to tenants in rent arrears.

33. Accordingly, taking the above relevant factors into account, the Tribunal ultimately concluded that the balance of reasonableness weighed in favour of making an eviction order and ground 12 had been met.

34. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

1 November 2024

Legal Member/Chair

Date