



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 Act”)

Chamber Ref: FTS/HPC/EV/24/2353

Re: Property at Flat 35 Avon House, The Furlongs, Hamilton, ML3 0BL (“the Property”)

Parties:

Ahmeed Balogun, 193 New North Road, Ilford, IG6 3AA (“the Applicant”)

Matthew John Collins, Flat 35 Avon House, The Furlongs, Hamilton, ML3 0BL (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 22 May 2024, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 3 June 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 9 October 2024 and appropriate intimation of that hearing was given to all parties
3. The application was heard together with a conjoined application involving the same parties for a payment order under tribunal reference FTS/HPC/CV/24/2310

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 9 October 2024 via telephone case conference. The applicant was not personally present in the telephone case conference but was represented by David Gray, Senior Accredited paralegal from Gilson Gray, solicitors, Edinburgh. The Respondent did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant's representative with regard to the application.
7. He confirmed that he wished the order for eviction to be made.

Findings in Fact

8. The Applicant is the registered owner of the property.
9. The Applicant and the Respondent as respectively the landlord and tenants entered into a tenancy of the property which commenced on 3 August 2023.
10. The tenancy was a private residential tenancy in terms of the Act.
11. The initial agreed monthly rental was £595. .
12. On 23 April 2024 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by sheriff officers and Notice became effective on 22 May 2024. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
13. The notice was correctly drafted and gave appropriate periods of notice as required by law.
14. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the tenant had been in arrears of rent for three or more consecutive months) . Arrears at the date of service of the notice were £2,380.00
15. Arrears had started to accrue in January 2024 and at the date of the lodging of the application arrears amounted to £2,380.00
16. The amount of arrears at the date of the CMD was £5,950.00.
17. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.

18. The basis for the order for possession on ground 12 was thus established.

Reasons for Decision

19. The order for possession sought by the landlord was based on ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.

20. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since January 2024, the respondent has failed to pay the rent as it fell due and significant arrears have accrued. The last payment made personally by the respondent was in December 2023. Since that date no payments have been made.

21. The tribunal was satisfied that the tenant has been in arrears for a period far in excess of three consecutive months. The tribunal accepted the unchallenged evidence of the applicant relating to the arrears. The tribunal accepted that the applicant had made appropriate attempts to encourage the respondent to deal with the arrears. The applicant has fully complied with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020

22. The grounds for eviction based on rent arrears was accordingly established.

23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

24. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive,

but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

25. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
26. In this case the tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the landlord in this application for the following reasons.
27. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. The landlord’s representative indicates that he believes the tenant is working. The respondent has provided no explanation for the failure to fully meet the rental obligations. The arrears as at the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondents. The respondent has lodged no written representations with the tribunal despite being offered the opportunity to do so.
28. The landlord provided a written statement to the tribunal in which he indicated that he is now suffering financial difficulties which are being caused by the non-payment of rent. He continues to have obligations to pay the mortgage on the property and the costs of repairs and maintenance while rental arrears are increasing.
29. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Jim Bauld

Legal Member/Chair

Date

9th October