



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/24/2692

Re: Property at 87 Low Craigends, Kilsyth, G65 0NZ (“the Property”)

Parties:

Sarah Addison (nee Cockburn), 16 Symons Close, Hartburn, Stockton on Tees, TS18 5QB (“the Applicant”)

John Sneddon, 87 Low Craigends, Kilsyth, G65 0NZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (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 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) Private residential tenancy agreement between the parties dated 31 March 2023;
 - (ii) Notice to Leave dated 9 February 2024 stating that proceedings will not be raised any earlier than 11 March 2024 together with proof of delivery by email on 9 February 2024;

- (iii) Section 11 notice to North Lanarkshire Council together with proof of sending by email;
 - (iv) Rent Statement; and
 - (v) Emails from Penny Lane Homes to the Respondent regarding the rent arrears.
2. By Notice of Acceptance of Application 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 ("CMD") on 18 November 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 15 October 2024. Both parties were invited to make written representations in advance of the CMD.
 3. On 4 November 2024 the Applicant submitted an updated rent statement confirming that arrears had increased to the sum of £2900. No written representations were received from the Respondent.

Case Management Discussion

4. The CMD took place on 18 November 2024 by teleconference. The Applicant was represented by Mr Jarvie, Solicitor of Bannatyne Kirkwood France and Co. The Respondent did not attend. The Tribunal noted that he had received notification of the CMD in accordance with Rule 17(2) of the rules personally by Sheriff Officers, and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed in his absence.
5. The Tribunal explained the legal test to be applied under ground 12 and asked Mr Jarvie for his submissions on the application.
6. Mr Jarvie confirmed that the Applicant sought an eviction order on the basis of rent arrears which had been accumulating for approximately 18 months. He referred to the updated rent statement, which evidenced that the arrears had increased and now stood at £2900. Mr Jarvie directed the Tribunal to the three letters that had been sent to the Respondent in accordance with the rent arrears pre-action protocol. There had been some suggestion that the arrears had accrued after the Respondent suffered health issues that affected his employment however no further information had been provided by him in this regard. Mr Jarvie advised that the Respondent did not appear to be in receipt of benefits. The payments that had been made to the rent account were not reflective of what he would be entitled to.
7. In response to questions from the Tribunal Mr Jarvie advised that he did not know the Respondent's exact age but he was believed to be of working age. The Respondent resided alone at the property with no dependents. The Applicant

had other rental properties. She had a mortgage in place for this property and used the rental income to pay the mortgage payments. In the absence of rent she was having to cover the mortgage from her own funds. No proposals had been forthcoming from the Respondent for payment of the rent and arrears, and there had been no communication from him.

8. 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

9. 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

10. The Applicant let the property to the Respondent under a tenancy agreement which commenced on 31 March 2023.
11. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
12. In terms of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £550 per calendar month.
13. On 9 February 2024 the Applicant delivered a notice to leave to the Respondent by email.
14. The Respondent has consented to delivery of notices by email under the terms of the tenancy agreement between the parties.
15. 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 11 March 2024.
16. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
17. As at the date of service of the Notice to Leave arrears in the sum of £1650 were outstanding.
18. As at the date of this decision arrears in the sum of £2900 are outstanding.
19. The Respondent's payments to the rent account have been sporadic. The Respondent has repeatedly failed to meet the monthly rent due.
20. The Respondent is of working age. The Respondent resides alone.
21. The Applicant wrote to the Respondent on 9 January 2024, 16 January 2024 and 6 February 2024 with the information required under the rent arrears pre-action protocol.
22. The Respondent has refused or delayed in entering into a payment plan for the arrears.
23. The Applicant has a mortgage over the property. The Applicant relies upon the rental income from the property to meet the mortgage payments.
24. The Applicant is using her own funds to meet the mortgage payments in light of the rent arrears.

25. The arrears are not due to any confirmed failure or delay in the 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 CMD and that to do so would not be prejudicial to the parties. The Respondent had made no representations regarding the application and had not participated in the CMD. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed.
27. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of sections 54 and 62 of the 2016 Act and therefore that application could be entertained.
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 at the CMD, that rent arrears of £1650 were outstanding when the notice to leave was sent to the Respondent. The Tribunal also accepted that the sum had increased to £2900 as at the date of the CMD. The Respondent had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was therefore satisfied that the Respondent had been in arrears for three or more consecutive months, both at the date of service of the notice to leave and as at the date of the CMD.
30. The Tribunal then considered the reasonableness of making an eviction order which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to these.
31. The Tribunal took into account the fact that the arrears were significant and the Respondent had repeatedly failed to meet the rent due, with no reasonable explanation provided as to why this was the case. The Tribunal was satisfied that the arrears were not due to any failure or delay in the payment of a relevant benefit, on the basis that no evidence had been provided by the Respondent to suggest that this was the case. These were factors to which the Tribunal applied significant weight.
32. The Tribunal considered the Applicant's compliance with the rent arrears pre-action protocol, noting that the Respondent had been written to on three occasions with information regarding his rental obligations and the rent arrears. The Applicant had directed him to support and advice, as well as offering to enter into payment plans. The Tribunal therefore gave significant weight to the fact that the Applicant had fulfilled her duties under the rent arrears pre-action protocol.
33. The Tribunal considered the Respondent's circumstances. It was noted that he was a single male who resided alone, and was believed to be of working age.

There were no dependents who would be at risk were an eviction order to be granted. The Tribunal noted the suggestion that he had previously suffered from poor health, which had affected his employment, however he had provided no further information in this regard to the Applicant. Accordingly the Tribunal gave less weight to this as a relevant factor. Given that the Respondent had failed to submit written representations or participate in the CMD the Tribunal had been unable to obtain any further details regarding his personal circumstances.

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

35. 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.

R.O'Hare

18 November 2024

Legal Member/Chair

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Date