



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/24/1844

Re: Property at 27A Landale Road, Peterhead, AB42 1SU (“the Property”)

Parties:

Mr James Wood, Cedar Tree Lodge, High Burnside, Aviemore, Scotland, PH22 1QD (“the Applicant”)

Mr Thomas Calder, Miss Abigail Jade Zamczynskyj, 27A Landale Road, Peterhead, AB42 1SU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (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 Respondents 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 of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon grounds 12 and 12A 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 26 November 2021;
 - (ii) Notice to Leave dated 22 September 2023 citing ground 12, together with proof of service on the Respondents by email on that same date;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council together with proof of service by email;
 - (iv) Copy emails from the Applicant's agent to the Respondents in compliance with the rent arrears pre-action protocol; and
 - (v) Rent statement.
2. By Notice of Acceptance of Application dated 21 June 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 Respondents 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.
 3. No representations were received from either party.

Case Management Discussion

4. The Case Management Discussion took place on 30 October 2024 by teleconference. The Applicant was personally present. The Respondent was not in attendance. The Tribunal noted that they had been given notification of the Case Management Discussion and had made no written representations in response. The Tribunal therefore determined to proceed with the Case Management Discussion in their absence.
5. The Tribunal went on to explain the purpose of the Case Management Discussion to the Applicant and asked him to explain the background to the application and the order he was seeking from the Tribunal. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
6. The Applicant advised that he had purchased the property from his daughter in 2020 to assist her and her partner with buying another house. He had carried out a refurbishment of the property which was a first floor flat. He had then instructed Aberdeen Considine to help him find a tenant. They had suggested Mr Calder, although there was no mention of his partner at the time. Initially the Respondents had paid the monthly rent. However they had a bereavement in the family and the Applicant had given them a payment holiday. He had done so again when the Respondents had health issues. The Applicant confirmed that the last full payment of rent was made in December 2022. The last payment made by the Respondents was a payment of £350 on or around June 2023. The Applicant advised that Aberdeen Considine had since sold their letting business to DJ Alexander and it was difficult to get information from them. The Applicant confirmed that he had continued to pay his letting agent a monthly management fee despite not receiving rent from the Respondents. The Applicant therefore had suffered financially. As well as the monthly management fee he had also

continued to maintain the property by carrying out repairs where required. The Applicant advised that one of his contractors had since refused to enter the property as the reported repair appeared to be a result of damage by the Respondents.

7. The Applicant explained that he was not surprised by the Respondent's lack of attendance at the Case Management Discussion. They had in fact moved out of the property during the October school holidays. They had obtained a council house in the local area, and their car had been seen parked outside. However they had not returned the keys for the property. The Applicant had therefore been advised that he would need an eviction order from the Tribunal to legally repossess the property. The Applicant explained that the Respondents had indicated they were handing back the keys on a number of occasions but had not done so.
8. The Applicant explained that he was concerned about the property lying vacant. A neighbour had noted that a large window was open, and the windows were misted. The Applicant was also concerned that the Respondents had left the water on, which posed a risk to the downstairs neighbour if the pipes burst. She was an elderly and infirm lady who resided with her son who also had health problems. The Applicant was therefore desperate to get into the property to secure it. The situation was causing him to lose sleep. He intended to sell the house if an eviction order were granted.
9. In response to questions from the Tribunal the Applicant confirmed that the Respondents resided with a teenage son. He was not aware of any health issues, the Respondents both appeared to be fit and healthy adults. The only thing he was aware of was that they had suffered a stillborn child, which was one of the reasons he gave them a payment holiday. The Applicant understood that the Respondents had previously been receiving universal credit with the housing element but had not paid this towards the rent. He believed they were now self-employed. He confirmed that he had received complaints from neighbours about their activity at the property during the tenancy.
10. The Tribunal queried the rent statement produced by the Applicant, advising that it was difficult to understand the figures quoted therein. The Applicant advised that the statement had been produced by Aberdeen Considine and he was unable to provide an explanation as to how the figures had been calculated. The Applicant did however confirm that no rent had been paid by the Respondents since 11 May 2023, which the Tribunal noted on the statement.
11. The Tribunal adjourned to deliberate, at which point the Applicant left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

12. 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.

Schedule 3, Part 12A

12A (1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice

to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) 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 or periods 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).

(4) 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.”

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement dated 26 November 2021.
14. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
15. In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £700 per calendar month.

16. On 22 September 2023 the Applicant delivered a Notice to Leave to the Respondent by email.
17. 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 23 October 2023.
18. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
19. As at the date of service of the Notice to Leave arrears in the sum of £5250 were outstanding.
20. As at the date of this decision arrears in the sum of approximately £14350 are outstanding.
21. The Respondents have failed to make any payments to the rent account since 11 May 2023.
22. The Respondents were previously receiving universal credit with a housing element but did not pay this towards the rent.
23. The Respondents have moved out of the property, having secured accommodation with the local authority. The Respondents have failed to return the keys to the Applicant.
24. The Respondents reside with their son, aged 16.
25. The Applicant has suffered financially as a result of the rent arrears. The Applicant had continued to pay a monthly management fee to his letting agent. The Applicant has continued to pay repairs and maintenance costs.
26. The Applicant intends to sell the property.
27. The Applicant's agent sent information regarding the rent arrears, the tenancy and details of advice agencies to the Respondents by email. The Applicant's agent offered to enter into payment plans with the Respondent.
28. The arrears are not due to any failure or delay in payment of a relevant benefit.

Reasons for Decision

29. The Tribunal was satisfied 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. The Respondents had been given the opportunity to attend the Case Management Discussion, and make written representations, and had chosen not to do so.
30. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon grounds 12 and 12A of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied

with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.

31. The Tribunal therefore considered whether grounds 12 and 12A of Schedule 3 of the 2016 Act had been met.
32. The Tribunal accepted, based on the documents submitted by the Applicant and his submissions at the Case Management Discussion, that arrears of £5250 were outstanding when the Notice to Leave was served. The Tribunal also accepted that the arrears had increased to approximately £14350 as at the date of the Case Management Discussion. Whilst the Applicant had not provided a comprehensive rent statement in this regard, the Tribunal noted that the balance of arrears stated in the various correspondence to the Respondents aligned with an ongoing increase in the arrears balance. The rent statement also showed that the last payment from the Respondents was a payment of £350 in May 2023, which reflected the Applicant's submissions at the Case Management Discussion. There was nothing before the Tribunal to contradict the Applicant's evidence in this regard. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent and that as at the date of sending the Notice to Leave and the date of the Case Management Discussion at least six months arrears had accrued.
33. The Tribunal then considered the question of reasonableness. The Tribunal found the Applicant to be straightforward and open in his submissions. He gave no reason for the Tribunal to doubt him and the Respondents had not put forward anything to contradict his submissions. The Tribunal therefore accepted his submissions as fact.
34. The Tribunal gave significant weight to the fact that the arrears in this case were excessive, amounting to approximately twenty months of unpaid rent. The Applicant appeared to have been more than fair to the Respondents, in continuing to fulfil his repairing obligations despite the rent arrears, and allowing them payment holidays when they experienced personal difficulties. The Tribunal accepted that the unpaid rent would have caused financial stress for the Applicant.
35. The Tribunal also took into account the fact that the Respondents had been in receipt of universal credit, but had chosen to spend the housing element instead of arranging for payments to be made to the Applicant. The Tribunal was therefore satisfied that the arrears were not due, either in whole or in part, by a failure or delay in the payment of a relevant benefit. The Tribunal was also satisfied that the Applicant had complied with the rent arrears pre-action protocol in terms of the correspondence sent by his agent to the Respondents.
36. The Tribunal had regard to the fact that the Respondents had now secured alternative accommodation with the local authority but had failed to return the keys, resulting in the Applicant having to seek an eviction order. This was a factor to which the Tribunal again gave significant weight.

37. Accordingly, taking the above factors into account as relevant to an assessment of reasonableness in this case, the Tribunal ultimately concluded that grounds 12 and 12A had been met and it would be reasonable to make an eviction order.
38. 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

30 October 2024

Legal Member/Chair

Date