



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/24/0948

Re: Property at 84 Burnmouth Road, Glasgow, G33 4SP (“the Property”)

Parties:

Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Mr Martin Dempster, Ms Karen Gunn, 84 Burnmouth Road, Glasgow, G33 4SP (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is a Rule 109 application received on 27th February 2024. The Applicant is seeking an eviction order under Ground 12A. The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 24th September 2020, at a monthly rent of £550. The rent had increased to £606.46 at the time of serving the Notice to Leave on 4th January 2024. The Applicant lodged a rent statement showing arrears in the sum of £5637.22, a copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, and pre-action requirement correspondence.
2. The case called for a Case Management Discussion (“CMD”) by teleconference on 17th July 2024. The Applicant was represented by Mr David Adams, Solicitor. The Respondent, Ms Gunn, was in attendance and representing Mr Dempster, who was unwell. Ms Gunn said she had been unaware of the true position in respect of rent arrears until she was served with the application. Ms Gunn cited health and employment issues in respect of Mr Dempster as reasons for the arrears. Ms Gunn said she was working

full-time, and that the Respondents reside at the Property with Mr Dempster's son, who attends a local school. Ms Gunn offered to make payment in the sum of £1000 per month towards the rent and arrears.

3. The Tribunal considered a reasonableness argument had been made by Ms Gunn in respect of her awareness of the current situation, and her proposal to rectify matters. The Tribunal also took into account Mr Dempster's health, and the fact that there is a child in the household. The Tribunal considered it would be reasonable to allow the Respondents the opportunity to address the situation, given the proposal put forward by Ms Gunn. It would also allow the Respondents to take advice on debt matters and benefits.
4. The Tribunal decided to continue the CMD to a further CMD. The Tribunal told Ms Gunn they would expect to see real progress at the next CMD, failing which, there was a risk that the eviction order would be granted. The Respondents were advised to consider the sources of advice contained within the pre-action correspondence.
5. Notification of a further CMD was made upon Mr Dempster by Recorded Delivery letter dated 17th October 2023, and upon Ms Gunn by emailed letter of the same date.
6. By email dated 1st November 2024, the Applicant lodged an updated rent statement showing arrears in the sum of £8277.28.

The Case Management Discussion

7. A CMD took place by telephone conference on 18th November 2024. Mr Adams was in attendance on behalf of the Applicant. The Respondents were not in attendance. The start of the CMD was delayed to allow the Respondents to attend.
8. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.
9. Mr Adams moved the Tribunal to grant the eviction order. The Respondents made payment of £1000 in August and September 2024, but no further payment towards rent or arrears had been forthcoming and the arrears continued to rise. It was reasonable to grant the order.
10. Responding to questions from the Tribunal as to whether there had been any communication from the Respondents since the last CMD, Mr Adams said there had been no communication of any substance. Ms Gunn had communicated to set up the new payment arrangement, and she had sent a message explaining that there had been an issue with her wages which meant she was late in making a payment, but there had been no discussion of any issues in relation to employment or health in respect of the Respondents.

Findings in Fact and Law

11.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 24th September 2020.
- (ii) The Applicant has served a Notice to Leave upon the Respondents.
- (iii) The Respondents have accrued rent arrears.
- (iv) The Respondents had substantial rent arrears which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the notice to leave.
- (v) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicants have complied with the pre-action protocol.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

12. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact. The Respondents had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave. At the time of serving the Notice to Leave, Ground 12A was still in force.
13. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondents were in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
14. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending letters to the Respondent dated 17th March and 9th August 2023.

15. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Tribunal was concerned that there is a child in the Property who attends the local school, and that granting the order may result in the family becoming homeless. The Tribunal was also concerned that there have been health difficulties in the past which may have impacted upon the situation leading to rent arrears. However, the Respondents chose not to attend the CMD or make any written representations to assist the Tribunal in considering the effect of granting the order upon the Respondents and the child.
16. Although the Respondents made two payments of £1000 in August and September, they have not adhered to the agreement. The Respondents have not contacted the Applicant to explain the reason for non-payment. The Applicant has made reasonable endeavours to assist the Respondents to rectify the situation, with no success. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The account has been in arrears since May 2022. The sum outstanding is significant and rising.
17. In all the circumstances, the Tribunal considered that a prima facie case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondents to attend or make representations to the Tribunal to indicate why an order should not be granted, and the Respondents have failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

18. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 30th December 2024.

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.

Helen Forbes

Legal Member

18th November 2024
Date