



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/24/1190

Re: Property at 174 Flat 0/1 Renfrew Rd, Paisley, PA3 4BP (“the Property”)

Parties:

Mr Alan Sneddon, 9 St Andrews Road, Renfrew, PA4 0SN (“the Applicant”)

Miss Cheryl Reid, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (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 dated 12 March 2024 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 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 18 and 21 September 2018;
 - (ii) Notice to leave dated 26 January 2024 stating that proceedings will not be raised any earlier than 26 February 2024 together with proof of delivery by email;

- (iii) Section 11 notice to Renfrewshire Council together with proof of sending by email;
 - (iv) Rent Statement; and
 - (v) Copy letters from the Applicant to the Respondent in compliance with the rent arrears pre-action protocol.
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 6 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 3. Sheriff Officers attempted to serve said notification together with a copy of the application paperwork upon the Respondent. Upon attending the property the officers found it empty and unoccupied with various furniture and internal doors lying outside. Notification was therefore given to the Respondent by service by advertisement on the Tribunal website under Rule 6A of the Rules.
 4. Both parties were invited to make written representations in advance of the CMD. No written representations were received.

Case Management Discussion

5. The CMD took place on 6 December 2024 by teleconference. The Applicant was in attendance. The Respondent did not attend. The Tribunal noted that she had received notification of the CMD in accordance with Rules 6A and 17(2) of the Rules and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed with the CMD in her absence.
6. The Tribunal asked the Applicant for his submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
7. The Applicant advised that the rent arrears had commenced in August 2023. The Applicant had worked with both the council and the Citizens Advice Bureau (“CAB”) to try and support the tenant. However she had not been truthful regarding her housing benefit entitlement. The CAB had spoken to the Applicant in March 2024 and had advised that the tenant had failed to supply the necessary information regarding her housing benefit qualifications. Accordingly the CAB did not think the rent would be paid. The Applicant had therefore made the application to the Tribunal.
8. The Applicant explained that he had given the Respondent every opportunity to address the situation. He had tried to support her by giving her money when she was short, and dropping off food for her children. The Respondent’s children had ultimately been removed from the property by social services. The Respondent

had since moved out of the property. The Applicant had been informed that she initially lived with friends before moving to a homeless unit, but he wasn't sure if that was true. The Applicant had also been advised that the Respondent had stated she was waiting for the Applicant to re-enter the property so that she could claim compensation from him for illegal entry. There had been no payments to the rent account since March 2024. The Applicant had a mortgage over the property and the situation was impacting him financially. He therefore sought an eviction order.

9. The Tribunal held a short adjournment to deliberate, at which point the Applicant left the call, before resuming the proceedings and confirming its decision.

Relevant Legislation

10. 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 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,

(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

11. The Applicant let the property to the Respondent under a tenancy agreement which commenced on 21 September 2018.
12. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
13. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £760.80 per calendar month.
14. On 26 January 2024 the Applicant delivered a notice to leave to the Respondent by email.
15. The Respondent consented to delivery of notices by email under the terms of the tenancy agreement between the parties.
16. The Notice to Leave included ground 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 February 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 £8647 were outstanding.
19. As at the date of this decision arrears in the sum of approximately £17000 are outstanding.
20. The Applicant has written to the Respondent on three occasions with information regarding the tenancy and arrears, and details of advice and support. The Applicant has offered to enter into payment plans with the Respondent regarding the arrears.
21. The Applicant has engaged with the council and the CAB to support the Respondent with the rent arrears. The Respondent has failed to provide the information necessary to process her claim for benefits.
22. The Respondent has young children who have been removed from the property by social services.
23. The Respondent is no longer residing at the property.

Reasons for Decision

24. 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. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
25. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12A 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.
26. The Tribunal therefore considered whether ground 12A of Schedule 3 of the 2016 Act had been met.
27. The Tribunal accepted, having regard to the documents submitted by the Applicant and the verbal submissions at the CMD, that rent arrears of £8647 were outstanding when the notice to leave was sent to the Respondent. The Tribunal also accepted that the sum had increased to approximately £17,000 as at the date of the CMD based on the Applicant's submissions that no rent had been paid since March 2024. The Respondent had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was therefore satisfied that six months arrears had been outstanding, both at the date of service of the notice to leave and as at the date of the CMD.

28. 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.
29. 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 as to why this was the case. The Tribunal therefore applied significant weight to the level of arrears and the pattern of non-payment as a relevant factor. The Tribunal accepted that the Respondent had not been forthcoming with her financial information to enable her benefits to be calculated, and therefore any failure in the payment of a relevant benefit was wholly down to her.
30. The Tribunal considered the effect of the arrears on the Applicant as a relevant factor. The Applicant had clearly been impacted financially. The Tribunal could reasonably assume that the uncertainty surrounding the rent payments would be a source of significant stress, particularly in light of the Applicant's mortgage liabilities. This was also a factor to which the Tribunal applied significant weight.
31. The Tribunal considered the extent of the Applicant's compliance with the rent arrears pre-action protocol. The Tribunal was satisfied, based on the correspondence produced by the Applicant that he had provided the Respondent with the information required and had offered support to her in addressing the arrears. She had however refused to engage on a meaningful basis, and had failed to make any reasonable efforts to resolve matters, despite having assistance from both the council and the CAB.
32. The Tribunal then considered the Respondent's circumstances, noting the Applicant's submission that she had now vacated the property. This reflected the position outlined in the sheriff officers report following the attempted service of the application paperwork at the address. The Tribunal was therefore satisfied that the Respondent would not be at risk of homelessness as she now appeared to be residing elsewhere. The Tribunal also noted that her children were being cared for by social services.
33. 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 12A 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

6 December 2024

Legal Member/Chair

Date