



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Re: Property at 64 Picardy Court, Rose Street, Aberdeen, AB10 1UG (“the Property”)

Parties:

Mr Alexander Clubb and Mrs Catherine Mary Clubb, Ord Croft, Newmachar, Aberdeenshire, AB21 7PS (“the Applicant”) per their agents, Laurie & Co Solicitors LLP, 17, Victoria Street, Aberdeen, AB10 1PU

Mr Joshua Crofts, 64 Picardy Court, Rose Street, Aberdeen, AB10 1UG (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 1 May 2024 and 21 June 2024 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act, that the tenant has been in rent arrears for three or more consecutive months.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties dated 27 April 2023 showing a monthly rent of £640.00;
 - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 12 March 2024 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeen City Council being the relevant local authority with proof of receipt;
 - iv) copy rent statement showing arrears of £4,250.00 due and owing at 1 May 2024 and with no payments received since December 2023;
 - v) pre-action requirements (PARs) letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 6 December 2024 at 14.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 28 October 2024.
4. Prior to the CMD, the Applicants' Agents amended the amount of rent due and owing to £8,730.00 and intimated this amendment to the Respondent.

CMD

5. The CMD took place on 6 December 2024 at 14.00 by telephone. The Applicants were both present and was represented by Mrs. Fyfe of the Applicants' Agents, accompanied by Ms. Milne. The Respondent was not present and was not represented. He did not submit written representations.
6. Mrs. Fyfe confirmed that the Applicants sought an eviction Order. She advised that there had been no contact from the Respondent since the PARS letters and Notice to Leave were issued and no payments had been made since December 2023.
7. With regard to the circumstances of the Parties, Mrs. Fyfe advised that the Applicants are both in their late 60s and are not wealthy. They have recently sold a motor home to supplement their income. Mrs. Fyfe explained that the Property is mortgaged. Mr. Clubb advised the Tribunal that the monthly mortgage payment has risen to £664.83 and confirmed that he and his wife do not own any other rental properties.
8. With regard to the Respondent, Mrs. Fyfe advised that he had been in employment when the tenancy began and appears still to be in employment and so it would seem that he is simply choosing not to pay the rent due.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties commencing on 27 April 2023;
 - ii) The monthly rent is £640.00;
 - iii) There are rent arrears of £4,250.00 at May 2024, which amounts to around 6 months' rent at that time;
 - iv) The Respondent has not made any payments in respect of rent since December 2023;
 - v) Rent due and owing by the Respondent amounts to £8,730.00 to date;
 - vi) The Respondent is and has been in rent arrears for three or more consecutive months since March 2024;
 - vii) A valid Notice to Leave was issued by the Applicant to the Respondent;
 - viii) PAR letters were issued on behalf of the Applicant to the Respondent;
 - ix) There is a mortgage secured over the Property;
 - x) Monthly mortgage payments are £664.83;
 - xi) The Applicants have limited funds to cover the cost of the mortgage;
 - xii) The Respondent is refusing to pay the rent due without reason;

Issue for the Tribunal

10. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. Ground 12 states: "*12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2),,(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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. (5) For the purposes of this paragraph (a) references to a relevant benefit are to (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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. (6) Regulations under sub-paragraph (4)(b) may make provision about (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy), (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy, (c) such other matters as the Scottish Ministers consider appropriate.”

Decision and Reasons for Decision

11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. Having found that the Respondent has been in rent arrears for three or more consecutive months, the Tribunal found that the eviction Ground has been met.
13. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
14. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
15. The Tribunal, having no evidence in respect of state benefits, was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
16. The Tribunal noted that the Applicants had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1st October 2022.
17. The Tribunal then had regard to the circumstances of the Parties.

18. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
19. The Tribunal then looked to balance the rights and interests of both parties.
20. The Tribunal accepted that the Applicants as landlords are entitled to rely on the rental income in order to meet the running costs of the Property and have limited funds to meet these costs. The Tribunal had regard to the fact that the Respondent has not engaged in any way with the Applicants and their representatives in respect of the rent arrears and has not made any payments of rent in almost a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
21. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
23. This Decision is 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.

K Moore

6 December 2024

Legal Member/Chair

Date

