



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/24/2170

Re: Property at 85/6 Telford Road, Edinburgh, EH4 2SB (“the Property”)

Parties:

Ms Savita Handa, 1 House O'Hill Row, Edinburgh (“the Applicant”)

Ms Tara Lothian, 85/6 Telford Road, Edinburgh, EH4 2SB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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 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;
 - (ii) Notice to Leave dated 3 April 2024 stating that proceedings will not be raised any earlier than 5 May 2024 together with proof of delivery by recorded delivery mail;

- (iii) Section 11 notice to Edinburgh City Council together with proof of sending;
 - (iv) Rent Statement; and
 - (v) Copy emails and letters from the Applicant to the Respondent regarding the rent arrears.
2. By Notice of Acceptance of Application dated 3 July 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 ("CMD") on 14 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 10 October 2024. Both parties were invited to make written representations in advance of the CMD.
 3. On the morning of the CMD the Applicant submitted an updated rent statement. No written representations were received from the Respondent.

Case Management Discussion

4. The CMD took place on 14 November 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 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 her absence.
5. The Tribunal explained the legal test to be applied under ground 12 and asked the Applicant for her submissions on the application.
6. The Applicant advised that she was seeking an eviction order. The Respondent had taken up the tenancy in 2022. The Applicant referred to the rent statements produced which showed a pattern of missed payments. She explained that the Respondent had received universal credit with the housing element, but had on occasion failed to make payment of this to the rent account. The Respondent would pay for a period then payments would stop. The Applicant advised that she had offered the Respondent employment to assist her with her rent payments but that had not worked out. The Applicant had tried to support the Respondent. She acknowledged that she should have commenced eviction proceedings at an earlier stage, however she had hoped that the situation would resolve itself. The Applicant advised that she had spoken to the Respondent, who had stated that she was waiting for the eviction order from the Tribunal.
7. The Tribunal asked questions of the rent statement produced earlier that day. The Applicant explained that a lump sum payment had been received from the Department of Work and Pensions ("DWP") in October, in the sum of £969.58, and a further payment of £2,908.74 had been received from the DWP in November. The Applicant knew it was from them because it was accompanied

by a letter. The backdated payments were for June, July, August and September 2024. There were no further backdates pending according to the DWP. The Applicant had asked for universal credit to be paid directly to her however it did not appear that this was happening. She would receive payments from them on the 10th of the month and had not yet received anything for November's rent. She believed the Respondent had likely stopped the payments, as she had done before. The Applicant referred to the last payment that had been received to the rent account, prior to the backdates, which was a payment of £895 in May 2024. The Applicant did not know if this payment had come from the Respondent herself, but it could have. When she was receiving direct payments from the DWP these were in the amount of £825 per month. The Applicant explained that she had tried to arrange direct payments from the Respondent's universal credit towards the arrears but the DWP had told her that this was not possible. She was not advised of the reason why this was the case. The Applicant had asked the Respondent for an explanation but she said she didn't know. The Applicant advised that she had been told by the Respondent a couple of months prior to the CMD that the Respondent was now in employment and would make payments to the rent and arrears. However nothing had been forthcoming.

8. The Tribunal asked about compliance with the rent arrears pre-action protocol. The Applicant conceded that the letters she had submitted to the Tribunal in this regard did not signpost the Respondent to support and advice. However the Applicant explained that she had met with the Respondent on four different occasions at the property. She had told her where she could go for support and advice. The Applicant had worked in local authorities and in the community, and she was familiar with this process. The Applicant had strongly encouraged the Respondent to speak to the council about rehousing, however the Respondent had said that she did not want a council house. The Respondent had repeatedly told her that the arrears would be paid by her partner. The Applicant had also received a call from the Respondent's partner who stated that they had split up but confirmed that he would pay the arrears. However no payments were forthcoming. The Applicant had asked the Respondent for a payment plan but had received no response.
9. The Tribunal asked about the Respondent's personal circumstances. The Applicant advised that, under the terms of the tenancy, the Respondent resided in the property with her two children. The Applicant believed them to be approximately 12 or 14, and 8 or 9 years old. However, on one occasion the Applicant had visited the property and had found another family living there. The Respondent had advised her that the family were staying there until they found accommodation. The Applicant understood that the family had since moved out. With regard to the Respondent's partner, or former partner, the Applicant did not know what the situation was with him. She believed he may live elsewhere. The Respondent's daughter resided in the area. The Respondent had been staying with her before she took on the tenancy. On one occasion the Respondent had indicated that she would be moving back to live with her daughter as a result of problems with the downstairs neighbour. However the Respondent's partner had subsequently told the Applicant that she was staying in the property. The Applicant advised that the Respondent's daughter lived locally, in the area in which the Respondent's children's school was located, therefore their education

would not be disrupted. The Applicant believed that the Respondent's intention was to return to her daughter's property once she received the eviction order. There were no health issues on the part of the Respondent or her children that the Applicant was aware of.

10. 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

11. 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

12. The Applicant let the property to the Respondent under a tenancy agreement which commenced on 10 March 2022.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
14. In terms of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £895 per calendar month.
15. On 3 April 2024 the Applicant delivered a notice to leave to the Respondent by recorded delivery mail.
16. 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 5 May 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 £4020 were outstanding.
19. As at the date of this decision arrears in the sum of £5,556.68 are outstanding.
20. The Respondent's payments to the rent account have been sporadic. The Respondent has repeatedly failed to meet the monthly rent due.
21. The Respondent has been in receipt of the housing element of universal credit at points during the tenancy. The Respondent has, on occasion, failed to pay this to the rent account.
22. The Applicant received backdated payments of universal credit to the rent account in the sum of £969.58 on 18 October 2024, and £2,908.74 on 4 November 2024. No further backdated payments are due to the Respondent.
23. The arrears are not due to any failure or delay in payment of a relevant benefit.
24. The housing element of universal credit amounts to £825 per month.
25. The Applicant cannot apply for direct payments for the arrears from the Respondent's universal credit.
26. The Applicant has been advised by the Respondent that she is now in employment.
27. The Applicant has written to the Respondent regarding the arrears, requesting proposals for payment, on 31 October 2022, 6 February 2023, 8 January 2024, and 5 March 2024.
28. The Applicant has met with the Respondent at the property on four occasions since the arrears began to accrue. The Applicant has directed the Respondent

to sources of advice and support. The Applicant has encouraged the Respondent to speak to the council regarding her situation. The Applicant offered to employ the Respondent to assist her with her rent payments.

29. The Respondent has made various promises of payment to the Applicant which have not been honoured.
30. The Respondent resides in the property with her two children.
31. Prior to taking up the tenancy the Respondent resided with her daughter. The Respondent's daughter's property is located in the area in which the Respondent's children attend school.

Reasons for Decision

32. 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.
33. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants 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.
34. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
35. The Tribunal accepted, based on the documents submitted by the Applicant and the verbal submissions at the CMD, that rent arrears of £4020 were outstanding when the notice to leave was sent to the Respondent. The Tribunal also accepted that the sum had increased to £5,556.68 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.
36. 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.
37. 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 also had regard to the fact that she had received the housing element of universal credit but had sometimes failed to pay this to the rent account. These were both factors to which the Tribunal applied significant weight. 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 the Applicant had been advised by the DWP that no further backdates were due to the Respondent.

38. The Tribunal considered the Applicant's compliance with the rent arrears pre-action protocol. Whilst the correspondence the Applicant had submitted did not fully comply with the requirements of the protocol, the Tribunal believed that the Applicant had verbally told the Respondent of where she could seek advice and support, and had encouraged her to speak with the council. The Applicant had met with her on four separate occasions. She had gone so far as to offer employment to the Respondent to assist her with her rent payments. The Tribunal therefore concluded that the Applicant had been proactive in engaging with the Respondent regarding the arrears, and the actions she had taken were sufficient to demonstrate compliance with the rent arrears pre-action protocol. The Tribunal gave significant weight to this.
39. The Tribunal considered the Respondent's circumstances. Whilst the Tribunal had concerns about the Respondent's two children, it was noted that the Respondent would have alternative accommodation available with her daughter, where she had resided prior to taking up the tenancy. Accordingly her children would not be homeless, and could continue to attend their local school. The Respondent also appeared to have obtained employment and would therefore be in a position to afford another tenancy, if she wished to do so. The Tribunal therefore gave less weight to the risk to the Respondent's children, were an eviction order to be granted.
40. 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.
41. 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

14 November 2024

Legal Member/Chair

Date