



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/24/1445

Re: Property at 41 Johnston Crescent, Lochgelly, KY5 9LN (“the Property”)

Parties:

Mrs Usha Gronbach, 1 Eastfield Road, Fauldhouse, EH47 9LE (“the Applicant”)

Mr Ryan Millar, Jennifer King, 41 Johnston Crescent, Lochgelly, KY5 9LN; 41 Johnston Crescent, Lochgelly, KY5 9LN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -
 - a. the tenancy agreement,

- b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. rent statement
 - e. pre-action requirement letters
3. A case management discussion took place on 4 November 2024. In attendance were the applicant's agent, Lynn Bain and the Applicant. Notice of the case management discussion had been made by sheriff officers on 27 September 2024. The respondents did not appear. The tribunal was prepared to proceed in their absence given they had notice of the case management discussion.

Discussion

4. The applicant advised that she was seeking an order for recovery of the possession of the property under the ground 12 (three months' rent arrears).
5. She advised that the rent arrears had been increasing since December 2023. They were now £6,975.
6. She advised that the respondents had made no payments to rent since that date. She advised that she used to receive universal credit £575 per month and she would receive some payments for the balance of £75 per month from the respondents. She advised that the £75 was not consistently paid but she had received some payments for this sum. She advised that the respondents had stopped paying rent altogether in December 2023.
7. She had first thought it had to do with them keeping the universal credit, but she had contacted universal credit, and they advised that there was no open claim for the respondents. She was aware that the respondents were working and so she assumed that they were keeping their money for rent and not paying her. She did not believe that the failure to pay rent was caused by a failure or delay in the payment of benefits.
8. She advised that for the most part of the tenancy, the respondents had been receiving universal credit.
9. Further, she had been in contact with the respondent about the arrears and since December 2023 they had told her that they were not paying the rent because the property was not habitable. The applicant advised that this was

not true. She said that there had been some repairs reported, namely there was a hole in the floor; there was a leak in the radiator, and a CO2 monitor needed to be reinstalled. She had sent tradesmen out to attend to these matters, but the respondents had been refusing to give them access. A number of tradesmen had refused to attend at the property.

10. She advised that since August/September 2024, she has managed to get access for tradesman and the works have been completed. The council have confirmed that they are satisfied that the work has been done. She advised that she could only get access by sending 48-hour access letters to the respondent.
11. She advised that she was assaulted by the female respondent on 8 March 2024 when she had attended at the property with a joiner. She said that she had been cornered behind a door and could not get out. The female respondent had been shouting and screaming at her. When she managed to pass the respondent, the respondent pushed her out of the house. She reported the incident to the police.
12. The applicant's representative advised that she had been at the property with the applicant before, and she had witnessed the respondent being aggressive and abusive towards the applicant. She advised that the respondent not let the applicant enter the property. The applicant's representative advised that the property was also being kept in an unclean and unsanitary condition. There were also a number of animals in the property.
13. The applicant advised that she is not able to have materials delivered to the property, for example in relation to the repairs. The respondent refuses to cooperate with the landlord.
14. The tribunal asked what may have caused the change with the respondents as it was noted that they had been tenants since 2019. The applicant believed that the issue was drug-related. She advised that tradesmen had noticed drug paraphernalia in the property.
15. She advised that she rents of 12 properties, however, this is her business, and she cannot afford not to receive rent; she advised that each of her properties, including this one has a mortgage, and she also has insurance and taxes to pay. She said that she had £0.07 pence in her bank account, and she was very worried about how she was going to pay her bills. She said that she is desperate about how she is going to pay the mortgage. She is worried if she can't pay the

mortgage the property might be repossessed. This is her only income. She has a daughter who is her dependent and who she supports.

16. She advised that the respondents reside in the property with their three children who are 12, 9 and 7 years of age.
17. She believed that there were other available properties in the area.
18. The applicant advised that she had made multiple contacts with the respondents about the rent arrears, but no payments had been forthcoming.

Findings in Fact

19. The Tribunal found the following facts established: -
20. There existed a private residential tenancy.
21. It had commenced on 3 March 2019.
22. The tenants were Jennifer King and Ryan Millar.
23. The landlord was Usha Gronbach.
24. The property was 41 Johnston Crescent, Lochgelly.
25. The tenancy stated that rent was £575 a calendar month payable in advance.
The rent had increased to £650 since at least January 2022.
26. There were rent arrears on the rent account since at least March 2022.
27. Rent arrears as of December 2023 were £675.
28. Rent arrears as of March 2024 were £2625
29. Rent arrears as of November 2024 were £6,975
30. There was submitted a notice to leave dated 26 January 2024, stating that an application would not be made until 28 February 2024. It sought eviction under ground 12 rent arrears. It set out that the respondent had been in arrears since February 2022 as the tenant had regularly failed to pay the £75 balance for the rent, the rent was being paid by universal credit. There was evidence of service of the notice.
31. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
32. There was evidence that the pre-action protocol requirements had been followed.

33. There was no evidence of failure or delay in any benefit payment to the respondent.
34. The respondents had failed to pay part of the monthly rent since March 2022. The arrears had been significantly accrued since January 2024.

Reasons for Decision

35. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.
36. The ground which the Applicant seeks eviction under is ground 12. It is in the following terms :-

12 Rent arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) [...]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 [—] ³ [

(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.] ³

(5) For the purposes of this paragraph— ...

40. The applicant confirmed that she sought an order for eviction based on the fact that the respondent had been in rent arrears for three or more consecutive months. When the notice to leave was served in January 2024 the respondent had been in rent arrears for well over three months. The rent statement showed that there had been rent arrears on the rent account since March 2022. We were unaware of any benefit issues which were causing the arrears. It appeared that the first part of the ground 12 was met.
41. Given the first part of the ground is met the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order.
42. We find it would be reasonable to grant the order for eviction; in coming to this conclusion, we took into account the following matters:-
43. Matters in support of granting the order were as follows:- The arrears were now in excess of £6,975. Arrears had been accruing significantly since January 2024. The respondents have made no payments at all to rent or arrears since January 2024. Most payments made previously were by direct payments from Universal Credit. There have been no payments from Universal Credit since January 20024. There is no open claim with Universal Credit.
44. The applicant had attempted to contact the respondent to address the arrears, but the contact did not meet with any success. The respondent had said that she was not paying the arrears because the house was not habitable but would not then allow the applicant and her tradesmen into the house. The repairs had been completed in around August/September 2024 and since that date, rent had still not been paid.
45. The Respondents conduct towards the applicant and her tradesmen was not reasonable. They will not allow tradesmen into the property. The female respondent has acted in an abusive and intimidating way to the applicant.
46. The impact of refusing the order would be detrimental to the applicant. The applicant has a number of properties which she rents out and she stated that each property has a mortgage. She requires the rent to pay the mortgages and to support her and her dependent. She advised that this failure to pay rent was causing her financial hardship and she was anxious and stressed about this matter. The applicant said that there was other property available in the local area.

47. Matters against the order being granted were that there were three children in the property, 12, 9 and 7 years of age. The applicant was running a commercial enterprise and should expect to take some risk renting out properties.
48. In balancing up the various factors before us, we do not consider that the matters against granting the order outweigh the matters in favour of granting it. Of particular weight is the fact that no rent, at all, has been paid since December 2023 and there appears to be no effort by the respondents to enter into any discussion about repayment of the rent or the arrears. The rent arrears have continued to increase. We consider it likely that the applicant would suffer financial detriment if the respondents remained in the property, and we do not consider that this is reasonable.
49. Accordingly, considering the papers before us and the oral submission by the applicant, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 was met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

50. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Observed

37. The tribunal observes that the applicant stated that the change with the respondents was believed to be drug-related. She advised that tradesmen had noticed drug paraphernalia in the property. She also advised the property was unclean and unsanitary. She advised that the respondents reside in the property with their three children who are 12, 9 and 7 years of age. We draw no conclusions on these statements, however, in view of the fact that there are 3 children in the property. We will direct the administration to send this statement of reasons to the relevant local authority where the property is situated in order

that they can consider these matters and take whatever action they consider necessary.

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.

Melanie Barbour

Legal Member/Chair

04 November 2024

Date