



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/24/3162

Re: Property at 223 Brandon Street, Motherwell (“the Property”)

Parties:

Coatbridge Property Investments Limited, 40 Carlton Place, Glasgow (“the Applicant”)

Mr Andrew Mackie, 223 Brandon Street, Motherwell (“the Respondent”)

Tribunal Members:

Melanie Barbour (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 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. Two applications were under Rule 111 and 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment and an order for recovery

of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The applications contained: -
 - a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. evidence of rent increase
 - e. rent statement
 - f. emails to the tenant about rent arrears.

3. A case management discussion took place on 4 March 2025. In attendance was the applicant's agent, Mrs Barclay from Happy Lets Limited. Notice of the Case Management Discussion had been made by sheriff officers. The respondent did not appear. The tribunal was prepared to proceed in their absence given they had notice of today's Case Management Discussion.

4. The applicant's agent lodged an updated rent statement on 6 February 2025. The rent arrears had increased to £4,811.45. The chamber had sent a copy of this email and updated rent statement to the respondent by post on 11 February 2025.

Discussion

5. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 12 (three months rent arrears).

6. The applicant was also seeking an order for payment of the amended sum of £4,811.45. The applicant's agent advised that she had sent the updated rent statement to the respondent around about the same time as she had sent it to the tribunal.

7. She moved to amend the sum sued to £4,811.45. The respondent had been made aware of this amendment. The tribunal granted this amendment.

8. She advised that the rent arrears had been increasing since the application was made and were now over £5,000.

9. The applicant's agent advised that they lettered the respondent usually weekly regarding his rent arrears.
10. She advised that the rent arrears are over £5,000 and there has been no agreement entered into by the respondent to make payments to rent or arrears. She advised the respondent has now stopped corresponding with the letting agent altogether. She advised that the letting agents were also now not getting into the property to do inspections.
11. She advised that the respondent works. The respondent has never been in touch to advise the letting agents that there was any issue or difficulty with his work due to illness or some other reason which had caused delay to paying rental payments.
12. She didn't believe there was any benefit issue outstanding for the applicant. She advised that he had not made the letting agent aware that he was on benefits. Furthermore the letting agent had tried to recover rent through direct payments in around April last year and they had been advised by the benefits agency that the respondent was not in receipt of benefits.
13. She advised that the respondent resides in the property himself, he is a single male in his early 30s.
14. She advised that it is a one bedroom top floor flat.
15. The applicant has around 40 properties in his portfolio which he rents out.
16. The applicant's agent advised that the last contact they had with the respondent was on the 18th of November 2024. He had said that he would contact them with a view to sorting something out with his rent arrears however there had been no further contacts since then. She confirmed it had also been November 2024 when they had carried out the last property inspection. The respondent was still residing in the property at that time.
17. The current arrears have gone up since her e-mail in February and on the 16th of February the arrears are now £5218.30.

Findings in Fact

18. The Tribunal found the following facts established: -

19. There existed a private residential tenancy.
20. It had commenced on 16 April 2021.
21. The tenant was Andrew Mackie.
22. The landlord was Coatbridge Property and Investment Co Ltd.
23. The property was 223 Brandon Street, Motherwell.
24. The tenancy stated that rent was £395 a calendar month payable in advance.
25. There was submitted a notice to leave dated 23 May 2024, stating that an application would not be made until 24 June 2024. It sought eviction under ground 12 rent arrears. It set out that the respondent had been in rent arrears of £1,556.65. A rent statement was attached to it. The notice to leave had been emailed to the tenant. There was evidence of service.
26. 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.
27. At 3 March 2025 rent arrears were £5218.30.
28. The respondent worked. He was a single male in his early 30's. He had no dependents living with him.
29. There was evidence that the pre-action protocol requirements had been followed.
30. There was no evidence of failure or delay in any benefit payment to the respondent.
31. The respondent had regularly failed to pay his rent and arrears. The arrears had been steadily accruing.
32. The respondent had failed to make any contact at all with the applicant's agent since November 2024. There were no proposals to repay the rent arrears.

Reasons for Decision

33. 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.

34. 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) [...]

(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's agent confirmed that they 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 on 23 May 2024 the respondent had been in rent arrears for well over three months. There did not appear to be 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 £5,000. Arrears had been accruing since around

November 2023. The respondent had never made any payment towards the arrears or the rent shortfall since 30 April 2024. There were no proposals to repay the arrears. The letting agent had lettered the respondent regularly regarding his rent arrears and suggesting that he contact them, but these efforts had not been successful. The last contact made by the respondent was now over four months ago. There had been no further contact since November 2024 and further the letting agent was now having difficulties accessing the property.

44. We also place weight on the fact that the applicant is single male residing in the property with no dependants and he is in his early 30s.
45. Matters against the order being granted were that the applicants were a commercial enterprise and would expect to take some risk renting out properties.
46. In balancing up the various factors before us, we do not consider that the factors against the order being granted outweigh the reasons why it should be granted. While the applicants may expect to suffer some financial risk in renting out properties, there have been clear attempts by the applicant's agent to try and engage with the respondent to pay his rent and none of these attempts have been successful. The arrears are now over £5000. There is no apparent reason for the failure to pay the rent. There are no dependents in the property. We considered that the attempts made by the applicants were reasonable. Given that there had been no substantive response by the respondent to address the issue, then in all the circumstances we consider be reasonable to grant the order.
47. Accordingly, considering the papers before us and the oral submission by the applicant's agent 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

48. 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.

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.

M Barbour

5 March 2025

Legal Member/Chair

Date