



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

Chamber Ref: FTS/HPC/EV/24/3274

Re: Property at Flat 1/2, 4 Montgomery Avenue, Paisley, PA3 4PX (“the Property”)

Parties:

Pennie Properties Ltd, 15 Arkleston Crescent, Paisley, PA3 4TG (“the Applicant”) per their agents, James Guthrie & Co LLP 3 Portland Road, Kilmarnock, KA1 2AN

Ms Jayde Bell, Flat 1/2, 4 Montgomery Avenue, Paisley, PA3 4PX (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

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 18 July 2024 and 16 August 2024 (“the Application”), the Applicant 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 three consecutive months’ rent arrears.

2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties showing a monthly rent of £875.00;
 - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 28 November 2023 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Renfrewshire Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £3,715.00 due and owing at August 2024;
 - v) pre-action email correspondence sent to the Respondent.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 17 March 2025 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent, by Sheriff Officer service on 11 February 2025.

CMD

4. The CMD took place on 17 March 2025 at 10.00 by telephone. The Applicant was represented by Mrs. C. McLeod of their organisation and by Mr. C. Haswell of the Applicant's Agents. The Respondent was not present and was not represented. She did not submit written representations.

5. Prior to the CMD, the Applicant's Agents amended the arrears due by the Respondent to £10,697.00.

6. Mr. Haswell confirmed that the Applicant sought an eviction Order.

7. With regard to the circumstances of the Parties, Mrs. McLeod advised the Tribunal that the Applicant is a relatively new company with a portfolio of five properties in the Paisley area. She explained that the effect of the rent arrears due by the Respondent has been that the Applicant has had to raise funds by way of a short term loan of £5,000.00 and a remortgage on the Property.

8. With regard to the circumstances of the Respondent, Mrs. McLeod advised that she has one child aged around one year. Mrs. McLeod advised further that the Respondent had sent her a text at 7.37 that morning to advise that she had vacated the Property and was returning the keys by post. Mrs. McLeod was aware that the Respondent had been in touch with the local authority for alternative accommodation.

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 1 July 2023;
 - ii) The monthly rent is £875.00;
 - iii) There are rent arrears of £10,697, which amounts to in excess of 12 months' rent;
 - iv) No rent has been paid since July 2024;
 - v) A valid Notice to Leave was issued by the Applicant to the Respondent;
 - vi) PAR correspondence was issued on behalf of the Applicant to the Respondent;
 - vii) The Applicant relies on regular payment of the full rent meet their financial commitments secured on the Property;
 - viii) The Respondent has vacated the Property.

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

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 is in rent arrears for more than three 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 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 Applicant 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 Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondent had not made any payment of rent since July 2024. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
21. The Tribunal accepted that the Respondent has vacated the Property,
22. 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.
23. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Karen Moore

Right of Appeal

17 March 2025