



Decision 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/24/3469

Re: Property at 38B Imperial Drive, Airdrie, ML6 9EQ (“the Property”)

Parties:

Blew Ltd, 20 - 22 Wenlock Road, London, N1 7GU (“the Applicant”)

Mrs Magda Korbel, Mr Vitor Manuel Magalhaes Mestre, 38B Imperial Drive, Airdrie, ML6 9EQ (“the Respondent”)

Tribunal Members:

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met in this case. The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1** The Applicant applied to the Tribunal for an eviction order 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. The application was conjoined with an application under Rule 111 of the Rules under reference FTS/HPC/CV/24/3470 as it related to the same parties and same tenancy.
- 2** The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 17 March 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondents by sheriff officers on 11 February 2025. Both parties were invited to make written representations.

- 3 On 3 March 2025 the Tribunal received written representations from the Applicant's representative, Pauline Ward of Kee Solicitors. The Applicant's representative provided an up to date rent statement in support of a request for amendment in the conjoined application FTS/HPC/CV/24/3470.

The CMD

- 4 The CMD took place on 17 March 2025 at 10am by teleconference. The Applicant was represented by Ms Ward. The Respondents both joined the call.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 30 July 2024;
 - (ii) Title sheet LAN51123 confirming the Applicant as registered owner;
 - (iii) Private residential tenancy agreement between the parties dated 29 June 2023;
 - (iv) Section 11 notice to North Lanarkshire Council together with proof of delivery by email;
 - (v) Notice to leave dated 7 June 2024 together with proof of delivery by email to the Respondents;
 - (vi) Rent statement; and
 - (vii) Copy correspondence from TM Residential to the Respondents in compliance with the rent arrears pre-action protocol.
- 6 The Tribunal explained the purpose of the CMD and the legal test under ground 12 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from the parties. For the avoidance of doubt the following is a summary of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 Ms Ward confirmed that the Applicant sought an eviction order under ground 12 of schedule 3 of the 2016 Act. The arrears currently stood at £4250. The Respondents had originally paid the rent of £750 per month but had since made payments of varying amounts. They had indicated that they did not believe the property was worth the full rent. There was mention of drug dealing in the vicinity and the Respondents had been advised by the Applicant's letting agent to report it to the police. The Applicant considered the rent was reasonable and in accordance with the contractual terms of the lease. Given the level of arrears Ms Ward submitted it would be reasonable for an eviction order to be granted. She made reference to the notice to leave that had been submitted with the application, which had been sent to the Respondents by email in accordance with the terms of the tenancy agreement. In response to questions from the Tribunal Ms Ward confirmed that there was no mortgage over the property.
- 8 Mr Mestre spoke on behalf of both Respondents. He explained that he had been out of work due to a health condition. His monthly earnings had reduced by half. He confirmed that the Respondents were both unable to work full time. They were employed in a warehouse. They had rented the property without seeing it. They wanted the Applicant to reduce the rent, however the

letting agent had told him that this wasn't possible and had been unwilling to discuss matters further. The letting agent's communication had been poor. Mr Mestre explained that the Respondents were unable to afford the rent for the property. They had made payments of £500 per month because it was all they could afford. Mr Mestre confirmed that he had reported drug dealing to the police.

- 9 Mr Mestre confirmed that the Respondents resided in the property with their children aged 16 and 13 who were both at school. They received some universal credit with a housing element in addition to their wages. Their income was around £2400 per month. Mr Mestre confirmed that the Respondents had applied for housing with the council but their application had been suspended due to the rent arrears. The council had however advised them that they would receive assistance with housing if the Tribunal made an eviction order.
- 10 In response to questions from the Tribunal Mr Mestre confirmed that the Respondents accepted the arrears of £4250. He reiterated that they could no longer afford the rent for the property.
- 11 Ms Ward confirmed that the Applicant did not wish to reduce the rent. It had remained the same since the beginning of the tenancy. It was a fair rent for the property. The Respondents had received information about support including the discretionary housing fund, as well as sources of assistance. It was Ms Ward's understanding that in cases such as this the local authority would have duties under the homelessness legislation.
- 12 Having heard from the parties the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

- 13 The Tribunal considered the following provisions of the 2016 Act:-

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

“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.”

Findings in Fact

- 14** The Applicant and the Respondents entered into a private residential tenancy agreement in respect of the property, which commenced on 28 June 2023.
- 15** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 16** In terms of clause 7 of the said tenancy agreement the Respondents undertook to pay rent at the rate of £750 per calendar month.
- 17** The Respondents began to accrue rent arrears in October 2023. Since then the Respondents have persistently failed to make payment of the full contractual rent for the property.
- 18** On 7 June 2024 the Applicant sent a notice to leave to the Respondents by email.
- 19** The Respondents consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 20** The notice to leave cited ground 12 and stated that an application to the Tribunal would not be made any earlier than 9 July 2024.
- 21** As at the date of the notice to leave arrears in the sum of £2150 were outstanding.
- 22** As at the date of this decision arrears in the sum of £4250 are outstanding.
- 23** The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 24** On 30 July 2024 the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council by email.
- 25** The Applicant is the registered owner of the property.
- 26** The Applicant has provided the Respondent with details of the tenancy agreement and the arrears, information about sources of advice and support, and has offered to enter into payment plans regarding the arrears.
- 27** The Respondents reside in the property with their two children aged 13 and 16, who are both in education.

- 28 The Respondents are both in part-time employment. The Respondents' income is approximately £2400 per month.
- 29 The Respondents can no longer afford the rent for the property.
- 30 The Respondents do not dispute that the rent arrears are due.
- 31 The Respondents have made an application for housing with North Lanarkshire Council which is currently suspended. The Respondents have been advised that the making of an eviction order will entitle them to further assistance from the council.

Reasons for Decision

- 32 The Tribunal took into account the application paperwork and the submissions at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules, and make relevant findings in fact based on the information provided by the Applicant and the Respondent. There were no identified issues to be resolved that would require a hearing to be fixed.
- 33 Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 12 had been met in this case.
- 34 The rent arrears in this case were not in dispute. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 35 The Tribunal was satisfied that the Applicant had complied with the rent arrears pre-action protocol, having considered the correspondence sent from TM Residential to the Respondents. There was no evidence before the Tribunal to suggest that the arrears were a result of any failure or delay in the payment of a relevant benefit. The Respondents had confirmed that they were receiving ongoing payments of universal credit.
- 36 The Tribunal had regard to the history of the rent account in this case. The arrears had increased over a prolonged period, during which time the Respondents had failed to make payment of the full rent for the property. Whilst the Tribunal noted that the Respondents had challenged the rental value, they had a contractual agreement with the Applicant to pay rent at the rate of £750 per month and had repeatedly failed to do so. Payment of rent is a fundamental obligation of any tenancy. These were all factors to which the Tribunal gave significant weight.

- 37** The Tribunal carefully considered the Respondent's circumstances. Whilst the Tribunal had concerns about the impact of eviction on the Respondents and their family, the Tribunal gave most weight to the Respondent's position regarding the rent. They had repeatedly stated during the course of the CMD that the property was simply not affordable. There did not appear therefore to be any prospect of the Respondents being in a position to meet their future rental obligations, in addition to repaying the arrears. The Tribunal considered this an unreasonable position for the Applicant to be in, as the registered owner of the property. The Applicant was entitled to receive the contractual rent and the Respondents were simply unable to meet their obligations in this regard.
- 38** The Tribunal noted that both Respondents were in employment and received universal credits to supplement their wages, which amounted to a monthly income of £2400 per month. It appeared that they would therefore be in a position to secure another tenancy in the private sector if required. The Tribunal also took into account the advice they had received from the local authority about the impact of the eviction order, and the duties the local authority would have towards them in terms of providing assistance. Accordingly, any concern the Tribunal had regarding the impact of eviction on the Respondents was mitigated by the options that would be available to them in terms of rehousing.
- 39** Taking the above into account as factor relevant to the issue of reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 12 had been met. The Tribunal therefore made an eviction order with execution of said order suspended for a period of two months.
- 40** 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

17 March 2025

Legal Member/Chair

Date