



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/24/4037

Re: Property at 11 Condor Drive, Arbroath, DD11 3EP (“the Property”)

Parties:

Ms Elizabeth Nuttall, Tower 19, Apartment 1007, Porto Arabia, The Pearl, Building 19, Street 118, Zone 66, Doha, Qatar, Qatar (“the Applicant”)

Mr Barry Scott Horne, 11 Condor Drive, Arbroath, DD11 3EP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 11 Condor Drive, Arbroath, DD11 3EP under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 30 August 2024, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 29 March 2021, letters to the Respondent dated 15 July 2024 and 31 July 2024, a Notice to Leave dated 17 July 2024, a Recorded Delivery proof of receipt dated 18 July 2024, a rent statement and an email dated 30 August 2024 addressed to Angus Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 23 August 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 15 February 2025 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 8 March 2025. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 31 March 2025. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 17 February 2025 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 8 March 2025.
6. On 18 March 2025 the Applicant’s solicitor forwarded an up to date rent statement to 28 February 2025 showing arrears of £11 346 and seeking to increase the sum of arrears. This was sent to the Respondent.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 31 March 2025 by way of teleconference. Mr Gallacher from Messrs Kee, Solicitors appeared for the Applicant. The Applicant’s brother Mr Lynch was also in attendance. The Respondent appeared on his own behalf. He was supported by Ms McPhee. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/24/4075.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 29 March 2021, the letters to the Respondent dated 15 July 2024 and 31 July 2024, the Notice to Leave dated 17 July 2024, the Recorded Delivery proof of receipt dated 18 July 2024, the rent statement to 28 February 2025 and the email dated 30 August 2024 addressed to Angus Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.
9. Mr Gallacher moved the Tribunal to grant an order of eviction. He referred to his application to increase the arrears to £11346 to 28 February 2025 and explained that the arrears had increased further to £11941. The tenancy had commenced on 29 March 2021 although the Respondent had lived in the Property since 18 June 2016. In terms of the tenancy agreement the monthly

rent was £595 due on the 29th of the month. The Respondent had asked that the rent be paid on 20th of each month. However, no payment had been made to the rent since 11 January 2024. He submitted that Ground 12 of Schedule 3 of the 2016 had been met.

10. With regard to reasonableness, he further submitted that his firm had sent pre action letters to the Respondent on 15 and 31 July 2024 after the Notice to Leave served on 17 April 2024. The Respondent had emailed on 12 August 2024 to advise he would make regular repayments and that his first wage was due on 22 August 2024. However, no payment had been made. He submitted the Applicant had worked hard to ensure that her family is well looked after and provided for. She is upset, frustrated and anxious about the fact that the Respondent has not been paying rent for nearly two years. The Applicant had invested in property to provide for her family. She had two children at university and was funding them through university as well as paying the legal fees in connection with these cases. The Applicant was also concerned that the Property was in disrepair and would need cleaned, repaired and the garden landscaped before she could sell it at a cost of approximately £30 000 - £45 000. She could not afford to keep the Property on. There had been issues with access despite the Applicant's brother Mr Lynch speaking to the Respondent about access. There were nearly two years of arrears. He was not aware of any issues with benefits. In the circumstances it was reasonable to evict. In answer to questioning from the Tribunal, Mr Gallacher advised the Applicant had about 12 properties she had invested in, but that they did not necessarily make her any money.
11. In response Mr Scott Horne explained that he had his own window cleaning business until February 2024. In March/April 2024 he started work as an engineer in a factory. He submitted he had had no contact with Mr Lynch but accepted he had received the letters dated 15 and 31 July 2024. His first full time wage was in August 2024. He explained that he had suffered with addiction but was now in recovery. He was really trying to get back on track and apologised to the Applicant. He explained he had two sons aged 17 and 19 who lived with him. They were both in employment but did not contribute anything towards the rent.
12. In answers to questioning from the Tribunal, the Respondent accepted he was in arrears of £11 346 and that he had only made two payments to rent since July 2023. He had been on Universal Credit but was now above the threshold. He explained he had agreed a repayment plan but had not stuck with this.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016

- The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

14. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12(rent arrears).
15. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
16. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.
17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 30 May 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 18 April 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
18. The Tribunal considered the Respondent had accepted the rent arrears. The Respondent's arrears were increasing, and no payment had been made since January 2024. However, Ground 12 is discretionary ground of eviction. The Tribunal found that the Applicant had established a case under Ground 12. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
19. The Tribunal noted the pre action requirement letters lodged with the application. The Respondent had received these letters but had not made any attempt to pay ongoing rent or clear the arrears. The Tribunal gave weight to the submissions that the Respondent's arrears were increasing and despite the pre action requirement letters and receiving a monthly wage had not paid.. On the other hand, the Tribunal took into account that the Respondent had had addiction issues and was in recovery. However that did not outweigh the fact the arrears were substantial, and no payments had been made in nearly 15 months. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council had been served. The Tribunal was satisfied on the basis of the documents

lodged, together with submissions made by Mr Gallacher, that the balance of reasonableness in this case weighted towards the Applicant.

20. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

21. The Tribunal granted an Order of eviction. 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.

Shirley Evans

31 March 2025

Legal Member

Date