



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/24/2899

Re: Property at 49 Kierhill Road, Balloch, Cumbernauld, G68 9BH ("the Property")

Parties:

Mrs Kulbinder Dham, 85 Southfield Road, Balloch, Cumbernauld, G68 9BH ("the Applicant")

Mr Andrew Adams, 49 Kierhill Road, Balloch, Cumbernauld, G68 9BH ("the Respondent")

Tribunal Members:

Andrew Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted.

Background

1. This is an application for an eviction order in regard to a Private Residential Tenancy ("PRT") made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) ("the Rules"). The PRT is between the Parties and relates to the Property. The tenancy commenced on 2nd October 2020.
2. The application relies upon a Notice to Leave dated 9th May 2024, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email on 9th May 2024, all in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that "the tenant has been in rent arrears for three or more consecutive months". The Notice to Leave intimated that an application to the Tribunal would not be made before 9th June 2024.

3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon North Lanarkshire Council by email on 13th November 2024.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by teleconference on 28th April 2025. The Applicant was represented at the CMD by Mrs Donna Cramb, of K Property, the Applicant's letting agent. Mrs Cramb confirmed that the Property was jointly owned by the Applicant and Mr Gurbaksh Kaur. The Applicant had authority from Mr Kaur to proceed with the application and to instruct Mrs Cramb to represent the joint owners of the Property at the CMD. The Respondent also joined the CMD conference call.
5. At the CMD the Tribunal was able to consider:
 - a. The terms of the tenancy agreement between the parties. The tenancy agreement was a Private Residential Tenancy Agreement in relation to the Property. The tenancy between the parties had commenced on 2nd October 2020. The monthly rent due in terms of the tenancy agreement between the parties was £600.00. No increase had been made to the amount or rent due during the term of the tenancy.
 - b. An updated statement of rent and arrears had been lodged by the Applicant's representative shortly before the CMD. That statement showed total rent arrears due by the Respondent as of 2nd April 2025 in the sum of £7785.00

Findings in Fact and Law

6. The Applicant is a joint owner of the Property along with Mr Gurbaksh Kaur.
7. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 2nd October 2020 ("the Tenancy"). The rent charged under the tenancy agreement is £600 per month.
8. The Applicant has issued a Notice to Leave dated 9th May 2024 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email dated 9th May 2024.
9. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 21st June 2024.

10. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on the Applicant's behalf on 13th November 2024.
11. The Respondent has been in arrears of rent due in terms of the tenancy between the parties from March 2023. Since that date the Respondent's arrears of rent have continued to accrue. The amount of rent arrears due by the Respondent to the Applicant as at the date of the CMD is £7785.00.
12. The Respondent lives alone in the Property which is a two bedroom flat. The Respondent is in full time employment and has a net income of approximately £500 per week.
13. The Respondent has made several payment arrangements with the Applicant to make payment of current rent due, along with payments towards the rent arrears accrued. The Respondent has failed to maintain such arrangements and has allowed further rent arrears to accrue.
14. The Applicant has provided information and support to the Respondent in compliance with the Rent Arrears Pre-Action Requirements Regulations.
15. It is reasonable to issue an eviction order.

Reasons for Decision

16. The Tribunal were satisfied that the Notice to Leave had been competently drafted and served upon the Respondent.
17. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made by the parties. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. There was no material disagreement between the parties on the evidence before the Tribunal.
18. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:
 - (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months....
and that...
 - (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.

19. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. The Respondent accepted that he has been in arrears of rent from March 2023 and that he has accrued arrears of £7785.00 as at the date of this hearing. On that basis the Tribunal determined that paragraph 3(1)(a) of Ground 12 was satisfied.
20. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph 3(2) of Ground 12.
21. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
22. In this case the tribunal finds that it is reasonable to grant the order.
23. At the CMD the Applicants representative made reference to the statement of rent which had been lodged with the Tribunal. She confirmed that the Respondent had been in arrears of rent from March 2023. It was further confirmed that the Respondent had accrued arrears of rent in the sum of £7785 as at the date of the CMD. Mrs Cramb confirmed that the Applicant's letting agents have written to the Respondent reminding him of his obligation to pay rent and to request payment of rent arrears which have accrued. She further confirmed that the Respondent had been provided with information and advice in compliance with the pre-action protocol prescribed by the Scottish Ministers. The Respondent has made several previous proposals to pay current rent and further payments towards the arrears of rent which have accrued. For short periods the Respondent paid monthly rent and made additional payments towards the rent arrears accrued. However, the Respondent has not consistently maintained such arrangements and has allowed rent arrears to continue to accrue over the period of the tenancy. The Applicant wishes to recover possession of the property because of the level of rent arrears which have been accrued by the Respondent. The Applicants' representative advised that the Applicants cannot afford to allow the respondent to continue to live in the property whilst rent arrears continue to accrue. The Applicant considers that the Respondent has accrued significant rent arrears, and that the Applicant is unlikely to recover these sums from the Respondent. The Applicant's representative noted that, at the CMD, the Respondent offered to make a lump sum payment in the sum of approximately £900 towards the rent arrears and to make weekly payments of £250 towards current rent and the balance of arrears due. The Applicant's representative considered that, given the Respondent's previous failure to maintain payment arrangements, it was highly unlikely that the Respondent would maintain the payments he now proposed.

24. The Respondent confirmed to the Tribunal that he agreed that he had rent arrears of £7785. He explained to the Tribunal that he had accrued arrears of rent primarily as he had made a number of poor choices in the past with money and that he had lost considerable sums through online gambling. The Respondent specifically accepted that it was reasonable in all of the circumstances that an eviction order should be granted against him. Notwithstanding this the Respondent stated that he was in a position to make an immediate payment of approximately £900 together with regular weekly payments of £250 towards his current monthly rent and the arrears which had accrued. The Respondent confirmed that he earned net pay of approximately £500 per week. He had liabilities for the current rent of £600 per month together with other financial liabilities for council tax, energy accounts and food. He accepted that he had failed to maintain previous arrangements made with the Applicant to clear his rent arrears. The Respondent was aware that he could seek advice and assistance in relation to his debts but had chosen to not do so.

25. The Tribunal consider that it is reasonable to grant the eviction order. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal consider that the balance of reasonableness is weighted towards the Applicant. The Respondent has incurred significant rent arrears. The Applicant has little confidence that the Respondent will maintain any payment arrangement to clear the arrears. The proposal made by the Respondent to make payments towards the arrears is considered to be unaffordable for the Respondent to reasonably maintain. Even if the Respondent maintained the payment arrangement, as now proposed, it would take a minimum of eighteen months to clear the accrued arrears. The Applicant's right to payment of rent under the terms of the tenancy agreement has been and will be severely prejudiced if the tenancy between the parties continues.

26. As there were no material disputes on the facts, the Tribunal exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

27. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

28. The decision of the Tribunal is 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.

Andrew Cowan

Andrew Cowan

19th March 2025

Legal Member/Chair

Date