



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/24/3937

Re: Property at 26A Garturk Street, Coatbridge, North Lanarkshire, ML5 4HA ("the Property")

Parties:

Ms Pauline Gallacher, 12 School House, Quarrier's Village, Bridge of Weir, PA11 3NQ ("the Applicant")

Mr Graham Ferns, 26A Garturk Street, Coatbridge, North Lanarkshire, ML5 4HA ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

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 26A Garturk Street, Coatbridge, North Lanarkshire, ML5 4HA 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. This is an action for recovery of possession of the Property raised in terms of 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 Private Residential Tenancy Agreement between the parties dated 1 April 2022, a rent statement showing arrears of £5300 to 23 August 2024, a Notice to Leave dated 3 July 2024, a copy envelope addressed to the Respondent stamped 3 July 2024, a Royal Mail track and trace collected receipt dated 20 July 2024, a Royal Mail track and trace delivered receipt dated 3 August 2024, letters to the Respondent dated 3 July 2024 and 1 August 2024 and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 with an email addressed to North Lanarkshire Council on 23 August 2024.
3. On 4 November 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 11 March 2025 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 1 April 2025. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 30 April 2025. This paperwork was served on the Respondent by Alan McLaughlan, Sheriff Officer, Edinburgh on 12 March 2025 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not make any representations.
6. On 16 April 2025 the Applicant's solicitor submitted an up to date rent statement showing arrears of £8500 to 1 April 2025.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 30 April 2025 by way of teleconference. Mrs Ward from Kee solicitors appeared for the Applicant . Ms Gallacher the Applicant was also in attendance. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 1 April 2022, a rent statement showing arrears of £5300 to 23 August 2024, a Notice to Leave dated 3 July 2024, a copy envelope addressed to the Respondent stamped 3 July 2024, a Royal Mail track and trace collected receipt dated 20 July 2024, a Royal Mail track and trace delivered receipt dated 3 August 2024, letters to the Respondent dated 3 July 2024 and 1 August 2024 and a Notice under Section 11 of the

Homelessness etc.(Scotland) Act 2003 with an email addressed to North Lanarkshire Council on 23 August 2024. The Tribunal considered these documents.

9. Mrs Ward explained arrears had increased to £8500 as per the rent statement lodged. The Respondent had not paid rent since February 2024 and even then that payment did not cover the full monthly rent. There was simply no communication with the Respondent. They had written to the Respondent regarding the arrears. The Respondent lives alone and is in full time employment. The Applicant understood the reason for the non payment of rent was because the Respondent has an addiction issue. He has advised the Applicant that he is happy to leave the Property but needs an Order from the Tribunal before he can be assessed as being unintentionally homeless. Mrs Ward went on to submit that the Notice to Leave had been served by Recorded Delivery post on 3 July 2024 but not collected by the Respondent until 20 July 2024. She submitted that as they had not raised the application until 23 August 2024 the Respondent had had the required notice in terms of Section 54 (2) of the 2016 Act. The Applicant was not seeking an order for payment as the Respondent was a family friend. However, Mrs Ward submitted the Applicant was under severe financial strain due to the non payment of rent and still had a mortgage to pay. The Applicant had worked over 40 hours overtime herself in March. She was depressed and although this was not caused by the Respondent it had not helped that he was not paying the rent. Her father had passed away last year and she felt the Respondent was taking advantage of the situation. In the circumstances the Applicant sought an eviction order.
10. The Tribunal queried whether the Notice to Leave complied with Section 54(2) of the 2016 Act when the Respondent had not received the Notice to Leave until 20 July 2024. The Tribunal referred Mrs Ward to Section 62 (5) of the 2016 Act and the assumption that a Notice to Leave would be received 48 hours after it was sent and queried whether, in light of the fact the Notice had not been received until some time after that, the minimum period of notice of 28 days had been given to the Respondent. Mrs Ward submitted that a tenant would be able to avoid having a Notice served on them by refusing to collect or sign for a Recorded Delivery letter. She submitted however they had not raised the application until 23 August 2024 which was more than 28 days after the Respondent had received the Notice on 20 July 2024. After some discussion the Tribunal adjourned to allow Mrs Ward to consider the position.
11. After a short adjournment the Tribunal referred Mrs Ward to Section 52 of the 2016 Act and in particular to sub-sections 52 (2)(b) and (4). Mrs Ward considered these and submitted that as the Respondent had not opposed the Order and as the level of arrears was such as to place the Applicant under

severe financial pressure it was reasonable for the Tribunal to entertain the application for eviction. She also submitted the Respondent had indicated he needed an Order to assist with his homelessness application. She also advised that the Respondent was believed to be in his 40s.

Reasons for Decision

12. 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.
13. 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).
14. 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.
15. 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 under Section 54 (2).
16. 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 1 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 3 August 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 dated 3 July 2024 but was not received until 20 July 2024. Despite the date that the Applicant could apply to the Tribunal on the Notice to Leave being 3 August 2024 the Tribunal was prepared having considered Mrs Ward's submissions that it would entertain the breach of Section 54 in terms of Section 52(4) as it considered it reasonable to do so. Arrears had increased to £8500, the last payment being

made over a year ago with no communication from the Respondent who had not engaged at all with the Applicant, her solicitors or the Tribunal process.

17. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £8500, the monthly rent being £400. The arrears amounted to over twenty one months of arrears. However, Ground 12 is a discretionary ground of eviction. 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.
18. The Tribunal was persuaded by Mrs Ward's submissions that Ground 12 had been established and also that it was reasonable to evict. The Applicant had clearly given some leeway to the Respondent due to him being a family friend. However, this has now led to her being at a financial disadvantage. The Respondent had not engaged with her solicitors who had tried unsuccessfully to keep the lines of communication open with the Respondent to assist the Respondent in their letters to him. The Tribunal was satisfied the Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. On the other hand, the Respondent did not oppose the application. He had indicated to the Applicant that he needed an Order of eviction to assist in his homelessness application. Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council had been served. The balance of reasonableness in this case weighted towards the Applicant.
19. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent was in rent arrears for over three months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

20. The Tribunal granted an order for repossession. 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

30 April 2025

Legal Member

Date