



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Residential Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/2359

Re: Property at Flat 2, 193 Quarry Street, Hamilton, ML3 6QW (“the Property”)

Parties:

Graham Broadhurst and Angela Broadhurst, 61 Kethers Street, Motherwell, ML1 3HF (“the Applicant”)

Mr Juma Bubakali, Flat 2, 193 Quarry Street, Hamilton, ML3 6QW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent

1. By application, received by the Tribunal on 28 September 2021, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 25 November 2019, at a rent of £525 per month, and a copy Rent Statement showing arrears of £3,463 at 27 August 2021. The Statement showed that £525 had been paid on 27 August 2021. The last payment before that had been £650 on 27 August 2021 and the account had been in arrears since 25 December 2019.
3. The Applicant also provided the Tribunal with a copy of a Notice to Leave dated 19 July 2021. It informed the Respondent that the Applicant was seeking eviction under Ground 12 of Schedule 3 to the 2016 Act, and that an application

would not be submitted to the Tribunal for an Eviction Order before 22 January 2022.

4. The Applicant stated in the application that, following the expiry of an earlier Notice to Leave, the Parties had agreed a Payment Plan, but the Respondent had defaulted on that Plan.
5. The Applicant asked the Tribunal to exercise the discretion vested in it by Section 52(4) of the 2016 Act to accept the application before the expiry date of the Notice to Leave.
6. The Applicant also provided the Tribunal with copies of letters to the Respondent dated 22 and 31 March, 2 April and 29 July, all 2021, in which the Applicant indicated willingness to enter into a payment plan and signposted the Respondent to sources of support, including Discretionary Housing Payments, the Scottish Welfare Fund, advice on the Scottish Government website, Shelter and Citizens Advice. The Applicant contended that this showed compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondent had defaulted on the agreed Payment Plan and, as the Applicant understood that he was in the course of applying for a local authority house, it was not in the Respondent's interest for the arrears to continue to accrue. In the circumstances it was reasonable that an Order for repossession should be granted.
7. On 21 December 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 11 January 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

8. A Case Management Discussion was held by means of a telephone conference call on the morning of 27 January 2022. The Applicant was represented by Ms Alexandra Wooley of Bannatyne Kirkwood France & Co, solicitors, Glasgow. The Respondent was not present or represented. The Applicant's representative told the Tribunal that no payment had been made since 27 August 2021, and the arrears were now £6,088.

Reasons for Decision

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
10. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an

application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

11. Ground 12 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
12. Section 54 of the 2016 Act states that a landlord may not make an application to the Tribunal for an Eviction Order using a copy of a Notice to Leave until the expiry of the relevant period in relation to that Notice. Section 52(4) of the 2016 Act provides that the Tribunal may entertain an application made in breach of Section 54 if the Tribunal considers it reasonable to do so.
13. The Tribunal noted that the expiry date of the Notice to Leave in the present case was 22 January 2022, but the application was received on 28 September 2021. The Applicant had stated that a Payment Plan had been agreed, but the Respondent had defaulted on that Plan. The Tribunal noted that five payments of £650, in line with the Payment Plan, had been made by the Respondent between 22 December 2020 and 27 May 2021 and that a payment of £525 had been made on 27 August 2021, but no payments had been made in February, June or July 2021 and no payments had been received since 27 August 2021. The first payment under the Payment Plan had reduced the arrears to £563, but they had now risen to over £6,000. The Respondent had not made written representations and had chosen not to be present or represented at the Case Management Discussion. Taking into account all the facts and circumstances circumstances, the Tribunal considered it reasonable to entertain the application before the expiry date of the Notice to Leave.
14. The Tribunal was satisfied that the Respondent had been in arrears for three or more consecutive months, that the rent was more than one month in arrears at the date of the Case Management Discussion and that there was no evidence before the Tribunal to indicate that the Respondent's being in arrears was attributable in whole or in part to the delay or failure in the payment of a relevant benefit.
15. The Tribunal was also satisfied that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.
16. The Tribunal noted that the Respondent had also not made any written representations to the Tribunal, so had not contested the allegation that he had

wilfully withheld the rent, and that he had not been present or represented at the Case Management Discussion.

17. The view of the Tribunal was that, in all the circumstances of the case and taking into account all the evidence before it, the requirements of Ground 12 had been met and, given the level of arrears, the length of time over which the arrears had built up, with no rent paid since August 2021, and the fact that the Respondent had defaulted on an agreed Payment Plan designed to pay down the arrears, it was 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.

G. C

Legal Member/Chair

27 January 2022
Date