



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/19/3917

Re: Property at 49 McDowall Avenue, Ardrossan, Ayrshire, KA22 7AJ (“the Property”)

Parties:

Mrs Margaret Bennett, 16 Millglen Road, Ardrossan, Ayrshire, KA22 7EA (“the Applicant”)

Ms Cheryl Moorehead, 49 McDowall Avenue, Ardrossan, Ayrshire, KA22 7AJ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision in absence of the Respondent

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

Background

[1] The application for a payment order for eviction for the property was received by the First-tier Tribunal Housing and Property Chamber (the Tribunal) on 9 December 2019. The ground of eviction was stated as ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

[2] The documents lodged with the application were:

1. Copy Private Rented Tenancy Agreement for tenancy commencing 2 March 2018
2. Rent Statement up to and including 08/11/2019.
3. Copy Notice to Leave
4. Sheriff Officer certificate of Service
5. S 11 Notice to North Ayrshire Council with proof of recorded delivery posting

[3] A Case Management Discussion (CMD) was fixed for 4 February 2020 at 14:00 in the Glasgow Tribunal Centre. The Respondent was notified of the application and CMD details, which were served on her by Sheriff Officers on 8 January 2020 together with an application form to request time to pay.

[4] On 23 January 2020 the Respondent made representations to the Tribunal and stated: *"I do understand I am in rent arrears and looking to get this paid as soon as I can but can't pay in lump as at this moment in time I am not working due to health reasons ... I am currently on benefits, I have been to speak to chap and they have advised to email you & request a time to pay order if possible? I can set up from my benefits. Just hope we can resolve this. Once I leave the premises there is a £350 holding deposit that the landlord can have to pay off some of the rent arrears also. Tomorrow I am meeting with the council to get keys to another flat with them so I will be out of the landlords home within 2 weeks as I am looking to leave ASAP. As I do not like the grief anymore than they do. So I don't know if the case for possession of the property can be dropped , as I won't be here by the 4th of February."*

[5] On 24 January 2020 the Applicant lodged an updated rent statement showing arrears of £763.56 as of 08/01/2020. On 31 January 2020 the Applicant submitted further documents including letters from Universal Credit confirming payment of £272.40 to the Applicant for the periods of 09/09/2019 to 15/10/2019, 09/10/2019 to 08/11/2019, 09/11/2019 to 08/12/2019 and a further rent statement of the period up to and including 28 January 2020 showing arrears of £841.16. The documents were intimated to the Respondent by the Tribunal on 31 January 2020.

[6] On 31 January 2020 the Respondent sent an email to the Tribunal stating: *"Hi Josh what does this mean 'lodge'? Also can you make them aware I will be out of the flat in McDowall Avenue by Wednesday this week coming. I am just finding transportation for my goods. In respect to the 'time to pay' has this been approved?"*

[7] The Tribunal contacted the Respondent by email to ask if she had lodged an application for time to pay as none had been received by the morning of the CMD. She replied on 4 February 2020 at 11:54 hours: *"I was told to ask you to send me the form that I could fill out or advise me on where to find this. I currently do not work so do not have the funds to pay to the landlord. Also I will be out of the property by tomorrow lunchtime can you advise on what I do with the keys?"*

[8] At the CMD at 14:00 the Respondent was not present or represented. The Applicant participated by telephone conferencing and was represented by Mr Blair from Taylor Henderson Solicitors.

[9] Mr Blair confirmed that the arrears of rent had increased to £841.16 as per the last rent statement submitted in evidence. He confirmed that the Respondent had not contacted the Applicant. Universal Credit payments were now coming in at the rate of £272.40 but left a shortfall of rent each month of £77.60. The Respondent had been in arrears for over 9 consecutive months.

[10] The Tribunal advised the Applicant and Mr Blair of the latest email received from the Respondent at 11:56.

[11] Findings in Fact:

1. The parties entered into a Private Residential Tenancy Agreement for the property commencing on 2 March 2018.
2. The monthly rent due under the tenancy agreement is £350 payable on the second day of each month.
3. As of 28 January 2020 the Respondent was in arrears of rent for the sum of £841.16
4. Rent of £272.40 per month has been paid directly to the Applicant by Universal Credit since 9 September 2019 leaving a monthly shortfall of £77.60
5. The Respondent continues to reside in the property as of the date of the CMD.
6. No further payments had been received since the latest rent statement.
7. A Notice to Leave was served on the Respondent on 5 November 2019 stating as the date proceedings could be raised 4 December 2019 and giving as the ground for eviction Ground 12. The arrears were evidenced by a rent statement sent with the Notice to Leave.
8. The Respondent has not handed back the keys and continues to occupy the property.

Reasons for decision

[12] In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

[13] However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
- (ii) to do so will not be contrary to the interests of the parties; and

- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
 - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

[14] The relevant provisions in the Act are:

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 or must 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.

Ground 12 under Schedule 3 of the 2016 Act

Rent arrears

- 12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
- (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—
 - (i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and
 - (ii) 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, and
 - (b) 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.

[15] The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application. The Respondent did not attend the CMD.

[16] The Applicant had issued the Respondent with a valid Notice to Leave and applied to the Tribunal after the required notice period had expired. The Ground stated in the Notice to Leave is the same Ground as stated in the application. Ground 12 (1) and (2) of Schedule 3 of the Act applies in this case.

[17] The Respondent had acknowledged rent arrears and in her representations did not dispute the increase of the rent arrears to now £841.16 or the benefit position as shown in the documents lodged by the Applicant.

[18] The Respondent initially advised the Tribunal that she would vacate the property prior to the date of the CMD and was enquiring with the Tribunal on the day of the CMD which steps she would have to take to hand in the keys. Her email of 4 February 2020 at 11:46 clearly states that she has not vacated the property as of that date.

[19] It is not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent has been in arrears of rent for over 9 months as shown in the rent statement.

[20] The Tribunal on the basis of the payment printout and the oral evidence of the Applicants' Representative accepted that the arrears on the day the Tribunal considers the application on its merits, namely the CMD date of 4 February 2020, are more than one month's rent as the arrears were £841.16 and the monthly rent is £350.

[21] The Respondent has not provided any information that would indicate that the arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Applicant had provided letters from Universal Credit showing regular payments being made in benefits directly to the landlord since September 2019 at the rate of £272.40 per month and thus falling short of the monthly rent of £350, which leads to an increase of arrears of £77.60 per month.

[22] The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the ground applies. This is a mandatory Ground of eviction. In terms of S 51(1) the Tribunal must issue an order for eviction.

In terms of S 51 (4) of the Act the Tribunal specifies the date of 6 March 2020 as the end date of the tenancy.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act

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.

Petra Henning- McFatrige
Legal Member/Chair

4 February 2020
Date