



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/22/1472

Re: Property at 9 Dalcross Way, Plains, Airdrie, ML6 7EG (“the Property”)

Parties:

Mr Derek Kelly, Linden House, Westermavis Bank Avenue, Airdrie, ML6 0HD (“the Applicant”)

Miss Diana Smith, 9 Dalcross Way, Plains, Airdrie, ML6 7EG (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ahsan Khan (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 Respondents for possession of the Property at 9 Dalcross Way, Plains, Airdrie, ML6 7EG 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 Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 18 May 2022, the Applicant’s agent 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 Private Residential Tenancy Agreement dated 12 December 2019 between the parties, a Notice to Leave dated 7 April 2022, various items of correspondence to the Respondent from the Applicant’s agent, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 18 May 2022.
3. On 9 August 2022, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 6 September 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 21 October 2022. The Respondent required to lodge written submissions by 28 September 2022. This paperwork was served on the Respondent by Andrew McLean, Sheriff Officer, Glasgow on 7 September 2022 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge written submissions by 28 September 2022.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 21 October 2022 by way of teleconference. The Applicant was represented by Mr William Dodd from M.A.S.K Property Management Ltd. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 12 December 2019 between the parties, a rent statement showing arrears of £10 455.44 to May 2022 and letters dated 22 and 29 March 2022 and 6 April 2022, a copy Notice to Leave dated 7 April 2022 with an email addressed to the Respondent dated 7 April 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council with covering email dated 18 May 2022.
8. Mr Dodd moved the Tribunal to grant the order for repossession. He stated that rent arrears had accrued long before his agency had taken over the management of the Property from another agency. With reference to the rent statement lodged he pointed out there were over £8000 of arrears when they took over the agency. Although the arrears on the rent statement lodged stood at £10 455.44 at the date of the application they had increased to

£10 830.49. They were receiving a monthly sum of £650 from the Respondent's Universal Credit entitlement against rent of £725.01. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the Respondent had agreed to pay a monthly rent and noted that at the time the Notice to Leave had been served on 7 April 2022 the arrears stood at £9655.42. The Tribunal also noted the said Notice relied on Ground 12 of Schedule 3 of the 2016 Act, being the rent arrears ground. Mr Dodd went onto state he had tried to get the Respondent to enter into a repayment plan with reference to the letters lodged. He was aware also that the Council had also encouraged the Respondent to enter into a repayment plan but despite his efforts and the efforts of the Council the Respondent had refused to engage and enter into any repayment plan. The Respondent was in receipt of Universal Credit.

9. With regards to the Notice to Leave Mr Dodd confirmed it had been sent by email and by Recorded Delivery post on 7 April 2022. He advised he had a track and trace receipt from Royal Mail which showed the Notice to Leave had been signed for by the Respondent on 8 April 2022. The Respondent had also emailed him on 11 April 2022 after receiving the Notice to Leave. The Tribunal noted that under clause 4 of the tenancy agreement communication to the Respondent could be by hard copy by personal delivery, by Recorded Delivery or by email.
10. When questioned by the Tribunal regarding the Respondent's personal circumstances, Mr Dodd understood that she had a child. He had received reports of anti-social behaviour and the Respondent was refusing to allow access for an inspection of the Property.
11. The Tribunal noted Mr Dodd had served a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 18 May 2022.

Findings in Fact

12. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 12 December 2019 in relation to the Property that the Respondent would pay the Applicants a monthly rent for the Property. The current rent is £725.01 per month.
13. The Respondent has fallen into arrears of rent. The arrears were £9655.42 on 7 April 2022 when the Notice to Leave was served and £10 455.44 on 18 May 2022, the date of the application. Arrears have now increased to £10 830.49.
14. The Applicant's agent sent letters to the Respondent on 22 and 29 March 2022 and 6 April 2022 regarding her arrears and requesting she contact them with a view to entering into a repayment plan. The Respondent did not do so.

15. On 7 April 2022, the Applicant's agent sent a copy of the Notice to Leave to the Respondent by both email and Recorded Delivery post. The said Notice requested that she remove from the Property by 8 May 2022. Clause 4 of a Private Residential Tenancy Agreement provides that the Notice can be served by hard copy by personal delivery, by Recorded Delivery or by email. The Respondent received and signed for a hard copy of the Notice on 8 April 2022 by Recorded Delivery post.
16. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. At the time of serving the Notice to Leave the Respondent had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy.
17. There are no outstanding benefits issues. The Respondent is in receipt of Universal Credit. The Applicant receives a payment of £650 per month from the Respondent's Universal Credit entitlement towards the monthly rent of £725.01.
18. The Respondent continues to reside in the Property. She refuses to engage with the Applicant. She refuses to enter into a repayment plan to reduce the arrears. As a result arrears are increasing.
19. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on North Lanarkshire Council on 18 May 2022.

Reasons for Decision

20. 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.
21. 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 of Schedule 3, namely rent arrears. This 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.
22. 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.

23. 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.
24. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Respondent is in arrears at Part 2 of the Notice in terms of Ground 12 of schedule 3 and makes reference to the letters lodged with the application and to a rent statement. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 8 May 2022
25. 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 served on the Respondent on 7 April 2022 by both email and Recorded Delivery post. The Respondent received the Notice on 8 April 2022 having signed for it.
26. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 8 May 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days in terms of the 2016 Act. Accordingly, the Notice to Leave complies with Section 62.
27. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on an eviction ground stated in the Notice to Leave, namely Ground 12 of Schedule 3.
28. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Dodd. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Dodd, whom they found to be credible, that the factual basis of the application had been established and was satisfied the Respondent was in considerable rent arrears and had not engaged with the Applicant by making any effort to repay these. A case under Ground 12 of Schedule 3 was accordingly met.
29. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Mr Dodd that the Respondent had ignored all attempts by Mr Dodd to engage. Mr Dodd had sent the Respondent letters inviting her to enter into a repayment plan which she had failed to do. The

Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Despite the Respondent having a child, the Tribunal accepted that Mr Dodd and the Council had encouraged her to enter into a repayment plan in the hope the action such as the current action could be avoided. Unfortunately, the Respondent had not heeded that advice. Arrears were increasing by the month. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order

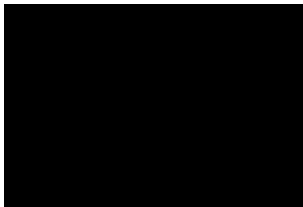
30. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

31. 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.



21 October 2022

Legal Chair

Date