

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51,52,56,62 of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/EV/18/2914

Re: Property at 12 D Dalrymple Court, Kirkintilloch, Glasgow, G66 3AA (“the Property”)

Parties:

Mr Alan Houston, 6 Keir Hardie Drive, Kilsyth, Glasgow, G65 0LQ (“the Applicant”)

Coda Estates Ltd, 2-4 Heath Avenue, Lenzie, Glasgow G65 0LQ (“the Applicant’s Representative”)

Mr Brian Todd, 12 D Dalrymple Court, Kirkintilloch, Glasgow, G66 3AA (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This Application under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) was made on 16 October 2018.
2. The tenancy agreement (PRTA), Notice to Leave (NTL), Section 11 Notice and Rent Statement of Account were produced along with the Application.
3. On 23 November 2018 a Notice of Acceptance was signed under Rule 9 of the Rules by a legal member with delegated powers of the Tribunal President.
4. On 4 December 2018 letters were issued to the Parties by the Tribunal intimating the date, time and place for a Case Management Discussion to

take place: 4 January 2018 at 10am within the Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow G2 8GT. Intimation on the Respondent being by way of Sheriff Officer Service, the mode of service being by way of letterbox on 5 December 2018.

The Case Management Discussion

5. No Parties attended. A telephone call was made to the Applicant's Representative Sharon Cooke, who advised she would not be attending as the matter had been resolved with a decision under CV/18/2172 having been made and the Respondent having vacated on 16 November 2018 and the keys having been returned to her. Apologies were made.

Findings in Fact

- I. The Parties entered into a PRTA on 13 April 2018 in respect of the Property for a rental of £475 pcm. Service of documents being allowed by e mail.
- II. A NTL was served by e mail on 15 August 2018 and service acknowledged by the Respondent on 17 August 2018. The NTL provided 28 days' notice.
- III. The NTL was flawed as the Ground for eviction was stated as Ground 11 of Schedule 3 to the Act, as opposed to Ground 12.
- IV. The Application for eviction to the tribunal relied upon Ground 12.
- V. The Application for eviction is refused, Section 52(5) of the Act not having been complied with.

Reasons for Decision & Decision

6. The Applicant's Representative indicated verbally on the date of the CMD that the Application was no longer required, as per the information in number 5 above.
7. Notwithstanding, the NTL on which the Application is based was flawed as it referred to Ground 11 and not Ground 12 despite rent arrears being the reason for it being served. In terms of Section 52(5) of the Act the Tribunal may not consider whether an eviction ground applies unless it is a ground which—
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
 - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.
8. The NTL should have relied on Ground 12 as the Guidance Notes clearly state
 - At Part 3 'you can serve this notice as soon as your tenant falls into arrears. You will then have to wait until the arrears have accrued over 3 consecutive months before you can make an application to the Tribunal'.
9. The Act makes it clear that Ground 11 does not include reference to a rent clause.
10. The relevant parts of the Act I considered are as follows:

Private Housing (Tenancies) (Scotland) Act 2016 ("the Act")

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.

52 Applications for eviction orders and consideration of them

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
 - (a) subsection (3), or
 - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) **The Tribunal may not consider whether an eviction ground applies unless it is a ground which—**
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or**
 - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.**

62 Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—
 - (a) is in writing,
 - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
 - (c) **states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and**
 - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3)References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

73.Minor errors in documents

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to—

(a)a notice under section 14(3), 16(3)(c), 22(1) or 61(1),

(b)the document by which a referral is made to a rent officer under section 24(1),

(c)the document by which an application is made to a rent officer under section 42(1), and

(d)a notice to leave (as defined by section 62(1)).

SCHEDULE 3

EVICITION GROUNDS

Breach of tenancy agreement

11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the tenant has failed to comply with a term of the tenancy, and

(b)the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

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.

(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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

11. The Application is refused.

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.

SUSAN CHRISTIE

Legal Member/Chair

04 January 2019

Date