



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/22/2696

Re: Property at 12 Kirklee Road, Bellshill, ML4 2QN (“the Property”)

Parties:

Semper Fidelis Ltd, 2288 Redbud Lane, Vancouver, V6K 4S6, Canada (“the Applicant”)

Ms Mary Campbell, 12 Kirklee Road, Bellshill, ML4 2QN (“the Respondent”)

Tribunal Members:

George Clark (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 the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 4 August 2022, the Applicant sought an Order for Possession of the Property 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 was in arrears of rent over three consecutive months.

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 27 May 2020 at a monthly rent of £400, and a Notice to Leave, dated 14 December 2021, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 17 June 2022. The Notice to Leave stated that the arrears stood at £1,300.

The Applicant’s agents, Jewel Homes, Coatbridge, provided the Tribunal with copies of emails sent to the Respondent on 26 January and 7 February 2022. The first

email confirmed that the rent arrears were £1,634.04 and directed the Respondent to information and sources of support for tenants during the COVID-19 outbreak and also signposted the Respondent to The Scottish Welfare Fund and sources of housing advice and support, including Shelter Scotland and Citizens Advice. The second email confirmed the arrears to be £2,035.04 and stated that the Applicant's agents wished to work towards a payment plan. The email signposted the Respondent again to possible sources of advice and support. The Applicant's agents also provided a copy of an email sent to the Respondent on 30 March 2022, noting that she had not been in touch to agree a payment plan and enclosing a Rent Statement which showed arrears as at 30 March 2022 of £2,770.08. There had been a payment of £140 in November 2021 but, after that, monthly payments had been at the rate of £32.48.

On 11 October 2022, 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 1 November 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 21 November 2022. The Applicant was represented by Miss Vicki McGuire of Jewel Homes, Coatbridge. The Respondent was not present or represented.

Miss McGuire told the Tribunal that the arrears now stand at £2,850.15. The housing element (£360) of the Respondent's Universal Credit is now being paid directly to them, together with a further sum of £33.49 from Universal Credit towards arrears. This means, however, that the arrears continue to increase each month, and the Respondent has not offered to enter into a payment plan. Miss McGuire's understanding is that the Respondent lives alone and is not in employment. The Respondent had approached North Lanarkshire Council to be rehoused, but the Council had indicated that they would not assist her unless an Eviction Order was issued against her. Miss McGuire's view was that there was no prospect of the Respondent having extra money to clear the arrears.

Reasons for Decision

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.

Section 51 of the 2016 Act states that the 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent 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 on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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.

The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal was also satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

The Tribunal noted that the Respondent had not taken up the opportunity to enter into a payment plan and that it was only as a result of the Applicant's representatives obtaining direct payments of Universal Credit that any rent was being paid. The Respondent had chosen not to be present or represented at the Case Management Discussion and had made no written representations for the Tribunal to consider. The arrears are substantial and there appears to be no realistic prospect that the Respondent will be in a position to clear them within a reasonable period of time.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to issue an Eviction Order against the Respondent. The Tribunal decided, however, that, to avoid any eviction proceedings during the Festive Period, the Eviction Order should not be enforceable until 27 January 2023.

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.

George Clark

Legal Member/Chair

21 November 2022
Date