



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

Chamber Ref: FTS/HPC/EV/22/2785

Property at Flat 2/R, 10 Molison Street, Dundee, DD4 6TH (“the Property”)

Parties:

Mr Jack McKeown, 4 Inverary Terrace, Dundee, DD3 6BS (“the Applicant”)

Mr Darren McIntosh, Flat 2/R, 10 Molison Street, Dundee, DD4 6TH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Fotheringham (Ordinary 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 against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months. A related application for a payment order under Chamber reference CV/22/2786 (“the payment application”), was also submitted
2. A copy of the applications and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 24 November 2022 at

10am by telephone case conference and that they were required to participate. On 7 November 2022 the Applicant lodged an updated rent statement with a written request to amend the payment application to reflect the current balance due.

3. The CMD took place at 10am on 24 November 2022. The Applicant was represented by Mr Smith, the letting agent. The Respondent did not participate and was not represented.

The CMD

4. Mr Smith told the Tribunal that there has been no recent contact with the Respondent but that he is still residing at the property. He confirmed that the Applicant seeks an eviction order. In response to questions about the updated rent statement Mr Smith conceded that this shows the arrears which will be due on 30 November 2022. It therefore includes 6 days of rent which are not yet due. Mr Smith advised the Tribunal that he wished to amend the sum on the rent statement to £3902.50, being the sum outstanding on 24 November 2022.
5. Mr Smith stated that the last contact with the Respondent was on 5 July 2022. The Respondent apologised that he had not been in contact recently and mentioned that he was having difficulty seeing his children and was going to apply for custody. He has not responded to the agent's emails since that time. In response to questions from the Tribunal about the pre action correspondence issued to the Respondent, Mr Smith said that prior to the Notice to leave and pre action letters, there had been regular contact with the Respondent by telephone and email, in relation to the rent arrears and that the Respondent previously engaged well. Mr Smith confirmed that the Respondent resides at the property alone. It is a one-bedroom flat. Whenever inspections and/or visits by contractors have taken place there has been no evidence of children staying there or visiting. The Respondent was working at the start of the tenancy. His current employment status is unknown. The Applicant made an application for direct payments from Universal Credit. This was declined because the Respondent did not receive the benefit. Mr Smith said that he was unable to provide information regarding health issues or other factors which might impact on the Respondent's ability to pay rent but stated that the Respondent had told him that he was stressed and worried about his children and his lack of contact with them. The current position regarding that situation is unknown. There have been no payments to the rent account since 16 June 2022 and no explanation provided for this.
6. In response to questions from the Tribunal about the Applicant, Mr Smith said that he has a portfolio of about 8 properties. There is a mortgage over the property and the rent arrears have had a financial impact as the mortgage payments are having to be met from other sources. To his knowledge, the Applicant intends to re-let the property if an eviction order is granted.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The Respondent is due to pay rent at the rate of £475 per month.
10. The Respondent has been in arrears of rent since June 2021.
11. The Respondent owes the sum of £3902.50 in unpaid rent to the Applicant.
12. The Applicant served a Notice to leave on the Respondent on 7 February 2022.
13. The Applicant issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
14. The Respondent resides at the property alone

Reasons for Decision

15. The application was submitted with a Notice to Leave dated 7 February 2022 together with a copy of an email sent to the Respondent on the same date, with the Notice attached. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 10 August 2022.
16. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
17. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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.”

18. Paragraph 3B states that, when considering whether it is reasonable to issue an eviction order, the Tribunal “is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.” This provision applies where “all or part of the rent on respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No 2) Act 2020 is in force”. This Act came into force on 7 May 2020. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020 specifies the pre-action requirements which apply to the 2016 Act. These include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
19. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenants 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.” These are defined in sub-paragraph (5) and include housing benefit and universal credit.
20. The Tribunal is satisfied that the Respondent currently owes the sum of £3902.50 in unpaid rent and that no payments have been made to the rent account since 16 June 2022. The Respondent has therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave and the date of the CMD.
21. The Tribunal proceeded to consider whether it would be reasonable to grant the order.
22. The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Tribunal was told that the Applicant’s representative was in regular telephone and email contact with the Respondent regarding the arrears, prior to service of the Notice to leave. Furthermore, in February and May 2022, the Respondent was issued with information regarding his current rent, the arrears, his rights in relation to eviction applications and sources of advice and assistance.
23. The Respondent did not participate in the hearing and did not provide the Tribunal with any information regarding his personal circumstances. Mr Smith was able to provide some details but no recent information due to lack of engagement by the Respondent. As a result, The Tribunal was unable to establish whether the Respondent is currently working or in receipt of benefits and whether any delay or failure in the payment of relevant benefits have contributed to the non-payment of rent. However, the Tribunal noted that the Applicant applied to Universal Credit for direct payments of housing costs, which was declined as the benefit was not in payment.

24. In reaching its decision the Tribunal had regard to the following: -

- (a) The arrears are substantial, and the account has been in arrears since June 2021.
- (b) The Applicant has complied with Pre Action requirements.
- (c) Pre action information and the Notice to leave were issued in February 2022. The Respondent has therefore had nine months' notice that an eviction order is being sought.
- (d) The Respondent has not engaged with the Applicant since July 2022 and has offered no explanation for non-payment.
- (e) There is no evidence that a delay or failure in the payment of benefit has been a factor.
- (f) Although his current employment status is unknown, the Respondent appears to have been working when some of the arrears were incurred.
- (g) The Respondent resides at the property alone.
- (h) The Applicant has a mortgage over the property.

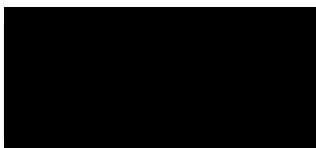
25. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable to grant an order for eviction.

Decision

26. The Tribunal determines that an eviction order should be granted against the Respondents.

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.



Josephine Bonnar, Legal Member

24 November 2022