



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/22/3133

Re: Property at 13 St Andrews Way, Wishaw, ML2 8SS (“the Property”)

Parties:

Mr Ian Lowe, 52 Albert Rd, Glasgow, G42 8DN (“the Applicant”)

Mrs Yvonne Barr, 13 St Andrews Way, Wishaw, ML2 8SS (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application lodged on 30 August 2022, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £4,279.17 and evidence regarding the ‘pre-action requirements’.

2. On 28 September 2022, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 11 November 2022, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 12 December 2022. Written representations were to be lodged by 1 December 2022. No written representations were submitted by the Respondent.

Case Management Discussion

4. At the CMD on 12 December 2022 at 2pm, the Applicant was represented by Mr Imran Haq, Director of G4 Properties Limited and Mr Keith Hassan, Office Manager. The commencement of the CMD was delayed for approximately 5 minutes to see if the Respondent would join the call but she did not.
5. After introductions and introductory remarks by the Legal Member, Mr Hassan presented the application and both he and Mr Haq thereafter answered a number of questions from the Tribunal Members. Mr Hassan advised that the Applicant is seeking an order for eviction in terms of the application submitted to the Tribunal on 30 August 2022 on the ground of three consecutive months’ rent arrears (Ground 12). The rent arrears owing when the application was lodged amounted to £4,279.17 and have now increased to £5,334.04. Reference was made to the Rent Statement lodged with the application and the other statement which was attached to the Notice to Leave, dated 29 November 2021. The Applicant’s representatives confirmed that, since the Rent Statement was lodged, three further payments have been made towards the rent arrears of £174.35 on 16 September 2022, £248.51 on 19 October 2022 and £307.27 on 18 November 2022. Further rental payments of £595 per month have also become due during the intervening period and hence the amount of arrears has increased. It was explained that the Respondent has been in receipt of Universal Credit throughout the tenancy and is understood to work part-time. The issue is that the Universal Credit payments are not enough to cover the monthly rent and, although Universal Credit payments are still coming into the rent account, the Respondent is not covering the shortfall in the monthly payments. The Respondent has made erratic payments of varying amounts over the course of the tenancy but none recently. The amount of the rent arrears now owing are the equivalent of almost 9 whole months’ rental payments. The Applicant’s representatives consider that their client, the Landlord, has always adopted a reasonable approach towards the Respondent and the rent and arrears and they have sought to engage with the Respondent regularly on behalf of their client. However, she has been difficult to communicate with and has made a number of promises of payment which have not then been made. They have provided her with a lot of information about the assistance available to people struggling with their finances and about the availability of Covid grants during the pandemic. Reference was made to the three letters they issued to her and

which are lodged with the Tribunal in respect of the pre-action requirements. They also had a meeting with the Respondent in October 2022, given that this Tribunal hearing was approaching. They explained their client's position, that he was intending to seek an eviction order and urged her, again, to offer some sort of payment plan. However, the Respondent did not get back in contact with them after that.

6. The Legal Member explained to the Applicant's representatives the various requirements of Ground 12, including that the Tribunal must be satisfied that it is reasonable to grant the order. There was detailed discussion with reference to the Rent Statement and, in particular, that it does not provide a 'running arrears balance' which the representatives conceded made it a little difficult to analyse. They explained that this is to do with their system but that they can make arrangements to produce the information in a different format if required and will ensure to do so in any future Tribunal cases. They answered a number of questions from the Tribunal Members regarding the figures produced and the arrears situation and balance at various points in the process. They explained that, when the Notice to Leave was served in November 2021, the arrears balance at that time was around £4,750 and the rent account had been in arrears for around 8 consecutive months. At no point during the intervening period has the rent account ever had a nil or credit balance as it has been in arrears throughout. Although benefits are in payment, there is no suggestion that there has been a failure or delay in the payment of benefits, such that backdated benefits are due to be paid towards the arrears. The benefits' payments are still being received approximately monthly into the rent account, the issue being simply that the benefits payments do not cover the monthly rent due in terms of the tenancy. It is understood that the Respondent lives with her two children, one of whom is a young adult and the other around secondary school age. The Applicant's representatives confirmed that they are unaware of the Respondent having any health issues, vulnerabilities or having experienced any recent life events which have adversely affected her finances. They consider that she is simply short of funds and cannot afford to continue renting this property. They are unaware whether the Respondent has looked at alternative housing options. Their client, the Applicant, has, in their submission been reasonable with the Respondent throughout. He has not applied any rent increases during the tenancy and was willing to assist and work with the Respondent in relation to her rent arrears. However, she failed to engage. It was stated that the Applicant does not own multiple properties, has a mortgage over this property and that the large amount of rent arrears is impacting adversely on his finances, such that it is his intention to sell this property once he recovers possession of it. It was submitted that, in all of the circumstances, it was reasonable for the Tribunal to grant the eviction order sought by the Applicant.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 19 February 2021.
3. The rent in terms of the PRT is £595 per calendar month.
4. The Respondent has been in receipt of Universal Credit throughout the tenancy, but the payments from Universal Credit do not cover the monthly rental payments.
5. The Respondent has made some additional payments towards the rent but these have been erratic and do not make up the shortfall between the benefits payments and the monthly rent.
6. Rental arrears have accrued over a long period of time and amounted to £4,279.17 when the application was lodged with the Tribunal and now amount to £5,334.04.
7. A Notice to Leave in proper form and giving the requisite period of notice (6 months) was sent to the Respondent by recorded delivery/signed for post on 29 November 2021 and was delivered to the Respondent on 30 November 2021.
8. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 1 June 2022.
9. The Tribunal Application was submitted on 30 August 2022.
10. The last payments towards rent were £205.68 on 19 August 2022, £174.35 on 16 September 2022, £248.51 on 19 October 2022 and £307.27 on 18 November 2022.
11. The rent account has been continuously in arrears since in or around April 2021.
12. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
13. The Respondent is still occupying the Property.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all

in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) as follows:-

“Rent arrears

12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

[F26(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.

[F27(3A)*Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—*

(a)that the eviction ground named by sub-paragraph (1) applies, and

(b)that all or part of the rent in 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.

(3B)Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

F28(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.]

Textual Amendments

F26 Sch. 3 para. 12(2) repealed (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), sch. 1 para. 1(1), (3)(i) (with ss. 11-13, sch. 1 para. 10)

F27 Sch. 3 para. 12(3A)(3B) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), sch. 1 para. 5(2)(a) (with s. 9)

F28 Sch. 3 para. 12(6)(7) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), sch. 1 para. 5(2)(b) (with s. 9)

Commencement Information

I12 Sch. 3 para. 12 in force at 1.12.2017 by S.S.I. 2017/346, reg. 2, sch.”

The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, as outlined above under the heading “Case Management Discussion”, to grant the eviction order sought. The rent account had been in arrears for a significant period of time (continuously from in or around April 2021) and amount to a significant sum which the Tribunal was satisfied would be having a negative impact on the Applicant’s finances. Although the Respondent is in receipt of Universal Credit, there was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. Although the rent arrears did appear to have mainly accrued during the period that the relevant Coronavirus legislation was in force, the Tribunal had no information before it that there had been any change in the Respondent’s financial circumstances

or ability to pay the rent as a consequence of the pandemic. In addition, the Tribunal was satisfied that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent and resolve the arrears situation with her.

4. The Respondent has not engaged properly with the Applicant, complied with previous payment proposals, nor proposed any recent payment plan. The Respondent did not submit any written representations to the Tribunal, nor attend the CMD of which she had been properly and timeously notified by the Tribunal by way of Sheriff Officer service. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair _____

12 December 2022
Date