



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/23/0365

Re: Property at 274 Dalriada Crescent, Motherwell, ML1 3YA (“the Property”)

Parties

**REWD LPB Limited (Applicant)
Miss Charlene Gallagher (Respondent)**

Anderson Strathern LLP (Applicant’s Representative)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted subject to the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 6 February 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 June 2021;
3. Notice to Leave dated 11 November 2022 and served by Royal Mail Track and Trace on 12 November 2022;
4. Pre-Action Letters of 12 December 2022 and 6 January 2023;
5. Section 11 Notice to Local Authority and confirmation of receipt;

6. Rent Arrears Statements at 10 November 2022 and at 1 May 2023;
7. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 14 April 2023;
8. Written Representations from the Applicant dated 1 May 2023 enclosing up to date statement of rent arrears.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 19 May 2023. The Applicants did not participate but were represented by their Solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but she did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that she should attend and the Tribunal could determine the matter in absence if she did not.

The Applicants' Representative confirmed that the amount of arrears had increased to £4,004. As far as the Applicants are aware the Respondent is still living in the Property. The last payment received was on 12 December 2022 and the Applicants have had no contact with her since then. The Applicants' belief is that the Respondent lives on her own with no dependents in the Property.

The Applicant's Representative submitted that it was reasonable to grant the eviction order having regard to the significant arrears.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

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.

The Tribunal then considered the documentary and oral evidence it had received from the Applicants and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 10 June 2021;
2. The monthly rent was £475;
3. Notice to Leave had been served on the Respondent on 12 November 2022;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of £4,004;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Respondent lives in the Property on her own and has no dependents in the Property.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

The Tribunal considered the terms of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** which clearly applied to the application by virtue of the application being received after the commencement date of the Act.

The Tribunal granted the order with the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**.

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.

Alan Strain

Alan Strain

19 May 2023

Legal Member/Chair

Date