



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/22/2538

Re: Property at 44 Raploch Street, Larkhall, ML9 1AE (“the Property”)

Parties:

Scott Building Services Ltd, 4 Middleton Avenue, Strutherhill Industrial Estate, Larkhall, ML9 2TL (“the Applicant”)

Mr Ross Quinn, 44 Raploch Street, Larkhall, ML9 1AE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (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.
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 9 February 2023 at 2pm by telephone case conference and that they were required to participate. On 7 February 2023, the Applicant lodged an updated rent statement and a copy of

an email to the Respondent.

3. The CMD took place at 2pm on 9 February 2023. The Applicant was represented by Ms Young, the letting agent. The Respondent did not participate and was not represented.

The CMD

4. Ms Young referred the Tribunal to the email which had been sent to the Respondent on Monday 6 February. Mr Quinn had telephoned in relation to access to the property by an electrician. He stated that he didn't see the point in paying his rent as he was due to be evicted. He seemed to think that the CMD had passed. The email was sent to explain that the CMD had not yet taken place and that he could participate by telephone. He was provided with the date and time. He did not respond to the email.
5. Ms Young told the Tribunal that the rent arrears have risen to £2975.20, with no payments made to the account since 18 November 2022. At one point the Respondent undertook to pay his rent weekly, but only adhered to this arrangement for a few weeks. Payments have been erratic since the start of the tenancy. Ms Young referred the Tribunal to the pre action requirements letters lodged with the application which were sent by post and email to the Respondent on 16 November 2022, 18 January and 8 February 2022. There was no response to the letters. In response to questions from the Tribunal, Ms Young said that the Respondent was in employment at the start and throughout most of the tenancy. When he called on Monday, he said that he was at work. For a brief period between November 2021 and March 2022 he was unemployed, and payments were received from Universal Credit. At no time did the Respondent advise them that he was having problems with benefit payments. Ms Young advised the Tribunal that the Respondent is 31 years of age and is understood to reside at the property alone. There have been no other serious tenancy related issues. The Applicant is a limited company and owns a number of properties. The Applicant has given the Respondent every opportunity to address the arrears and previously sought a payment order instead of seeking eviction. However, the arrears are increasing and the Respondent is not meeting his rent charge or paying anything to the arrears.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent is due to pay rent at the rate of £360 per month.
9. The Respondent has been in arrears of rent since May 2021.

10. The Respondent owes the sum of £2975.20 in unpaid rent to the Applicant.
11. The Applicant served a Notice to leave on the Respondent on 21 June 2022.
12. The Applicant issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
13. The Respondent resides at the property alone.

Reasons for Decision

14. The application was submitted with a Notice to Leave dated 20 June 2022 together with a Sheriff Officer certificate of service which establishes that the Notice was served on 21 June 2021. 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 20 July 2022.
15. 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.
16. 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."
17. 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.

18. 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.
19. The Tribunal is satisfied that the Respondent currently owes the sum of £2975.20 in unpaid rent and that no payments have been made to the rent account since 18 November 2022. The account has been in arrears since May 2021. 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.
20. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) 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 letters submitted with the application were sent by email and post. These contained information regarding the current rent charge, the arrears, the Respondent's rights in relation to eviction applications and sources of advice and assistance.
 - (b) The Respondent did not participate in the hearing and did not provide the Tribunal with any information regarding his personal circumstances. The Applicant's representative was able to confirm that the Respondent is currently in employment and was only eligible for benefits for a 4-month period between November 2021 and March 2022. During this period, payments were received from Universal Credit. There is no evidence to indicate that a delay or failure in the payment of benefits has caused or contributed to the rent arrears.
 - (c) The Respondent has made no payments to the arrears or to the rent account since November 2021. The account has been in arrears since May 2021.
 - (d) The Respondent resides at the property alone.
21. 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

22. The Tribunal determines that an eviction order should be granted against the Respondent.

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

Josephine Bonnar, Legal Member

9 February 2023