



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

Chamber Ref: FTS/HPC/EV/22/4083

Re: Property at F2 - 37 New Street, Rothes, Moray, AB38 7DQ (“the Property”)

Parties:

Eilander Limited, St David's, George Street, Bathgate, EH48 1PH (“the Applicant”)

Mr Jordan McNaught, F2 - 37 New Street, Rothes, Moray, AB38 7DQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 23 June 2022 stating that proceedings for possession will commence no earlier than 24th July 2022 and citing ground 12, together with proof of service on the Respondent by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Moray Council together with proof of service by email;
 - (iv) Rent Statement; and
 - (v) Copy correspondence from the Applicant's representative to the Respondents in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 29th March 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.
- 3 The Applicant subsequently submitted a request to amend the application to include ground 12A under Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 together with a rent statement confirming arrears exceeding six months rent. The said request was intimated upon the Respondent.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 29 March 2023. The Applicant was represented by Mr John Jarvie, Solicitor. The Respondent was present..
- 5 Mr Jarvie confirmed that the Applicant sought an eviction order under ground 12A and requested amendment of the application to incorporate this under section 52(5)(b) of the Private Housing Tenancies (Scotland) Act 2016. The arrears now stood at £4550 which was considered extensive. The Applicant's position was that given the level of arrears it would be reasonable for an eviction order to be issued. The Respondent had not made any payments in the last year and had failed to engage meaningfully in trying to address the arrears. The only economic route for the Applicant was to end the tenancy in order to prevent further financial prejudice. Mr Jarvie confirmed that the Applicant had a mortgage over the property and did not presently have the funds to pay this due to the lack of rent. Mr Jarvie confirmed that the Applicant rented out other properties. He was not aware if any housing benefit was due to be paid.
- 6 The Respondent addressed the Tribunal. He confirmed that he had been unemployed since June 2022 after suffering from mental strain and dealing with depression and anxiety. He had been trying to find another job ever since. His intentions were to leave the property and start paying off the arrears however he had yet to find new employment. He wished to obtain a reasonable source of income at some point but it was unlikely at the moment. Mr Jarvie confirmed that he had attempted to seek advice but he was dealing with his anxiety which

was taking time to address. He had looking at other housing options but nothing was financially possible at the moment due to his lack of income. He had spoken with someone at the local Council about applying for council accommodation. He confirmed that in the event of an eviction order being made he would be able to stay with friends as a temporary solution until he got something sorted through the Council. He confirmed that he resided alone in the property. The Tribunal asked the Respondent if he had applied for housing benefit however he advised that he had not. He was aware that housing benefit may be available and how to go about making a claim but was not keen to go down this route and instead his income was supported by contributions from friends. The Respondent advised that there was nothing he was aware of that would place any barriers to his entitlement to housing benefit but reiterated that it was not something he wished to pursue. He didn't know how to explain it to the Tribunal but he was simply skeptical of the process. The Respondent confirmed he accepted that the rent arrears were due.

Findings in Fact and Law

- 7 The parties entered into a Private Residential Tenancy Agreement dated 10 July 2019;
- 8 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 9 On 23 June 2022 the Applicant delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 24 July 2022.
- 10 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 11 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £350 per calendar month.
- 12 As at the date of the Case Management Discussion arrears in the sum of £4550 were outstanding.
- 13 The last payment to the rent account by the Respondent was on 7 March 2022.
- 14 The Applicant has sought to assist the Respondent by offering to enter into payment arrangements, by advising him of the outstanding arrears and by directing him to sources of funding.
- 15 The Applicant is financially prejudiced by the non payment of rent by the Respondent. The Applicant had a mortgage over the property.
- 16 The Respondent is a single adult with no dependents.

- 17 The Respondent is currently unemployed.
- 18 The Respondent cannot offer any payments towards the rent at this time.
- 19 The Respondent has approached Moray Council with a view to seeking council accommodation.
- 20 The Respondent does not intend on applying for any benefits that would assist in the payment of the rent.
- 21 It is reasonable to make the order sought by the Applicant.
- 22 The provisions of ground 12A of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 23 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent accepted that the rent arrears were due and the Tribunal therefore concluded that it could make a determination as to the reasonableness of making an eviction order through the exercise of its judicial discretion based on the facts before it.
- 24 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Applicant had however sought to include ground 12A in the application following the introduction of the Cost of Living (Tenant Protection) (Scotland) Act 2022.
- 25 Rule 14(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Procedural Rules 2017 as amended permits a party to amend an application with the cost of the Tribunal. The other party must be given an opportunity to respond. The Tribunal noted that the request for amendment had been intimated upon the Respondent timeously and he had not expressed any objection. He accepted that the arrears were now in excess of 6 months rent. Section 52(5) of the 2016 Act further provides that the Tribunal may allow inclusion of any ground in an application where it has not been stated in the Notice to Leave. In light of the circumstances surrounding the request for amendment and the recent legislative changes which had led to same the Tribunal was satisfied that it would be reasonable to allow the inclusion of ground 12A in light of the level of arrears and the length of time since the last

payment. The Tribunal therefore allowed the Applicant's request and considered whether ground 12A had been met.

- 26 The Tribunal accepted that there were rent arrears outstanding in the sum of £4550 which was in excess of six months rent. There had been no payments to the rent account for over a year. The lack of ongoing payments to the rent account had resulted in a significant balance of arrears.
- 27 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from the Applicant's representative at the Case Management Discussion. It was clear that efforts had been made to alert the Respondent to the increasing arrears. He was unable to give any indication of when he would be in a position to make payment and he appeared unwilling to pursue housing benefit despite being aware of the process for making a claim and being of the view that there would be no barriers to his entitlement. The Tribunal found it difficult to understand his position in this regard. The Tribunal further noted that the Respondent was single with no dependents, and had been directed to advice agencies for support through the Applicant's compliance with the pre-action requirements. He had also sought information from the local authority about obtaining council accommodation and had advised the Tribunal that he would be in a position to reside with friends on a temporary basis until such time as he obtained new accommodation. Were the tenancy to continue the Tribunal could reasonably assume that the arrears would continue to accrue in the absence of any proposals for payment and the the Tribunal therefore considered that the balance weighed in favour of the Applicant in terms of the reasonableness of granting the order.
- 28 Accordingly, having regard to the significant level of arrears, the efforts by the Applicant to assist the Respondent, the lack of any payment offer forthcoming and the ongoing financial impact on the Applicant the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case to make an eviction order.
- 29 The Tribunal therefore determined to make an order for eviction against the Respondent. The decision of the Tribunal was unanimous.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

R O'Hare

29 March 2023

Legal Member/Chair

Date