



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/23/0778

Re: Property at 42A King Street, Stonehouse, Larkhall, ML9 3EF (“the Property”)

Parties:

Miss Nada Pavlovic, 25 Osterley Views, West Park Road, Southall, UB2 4UN (“the Applicant”)

Mr Peter Haynes, 42A King Street, Stonehouse, Larkhall, ML9 3EF (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 8 June 2023 by conference call. The Applicant was personally present. The Respondent did

not attend nor was he represented. The papers had been served via letterbox service at the Respondent's address by Sheriff Officer on 9 May 2023. The Tribunal was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in his absence.

3. The Applicant moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 2 March 2018. The Respondent had fallen into arrears of rent in August 2019 and had been in a continuous arrear since then. The monthly rent is £300. There had been a recent small payment received from Universal Credit, and the arrears currently stood at £1,917.29.
4. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 10 January 2023 by way of email. Attempts had been made to discuss matters with the Respondent but he had failed to engage. The Respondent has not answered the Applicant's calls since February 2023. So far as the Applicant is aware, the Respondent lives alone and has no dependants. He was employed at the start of the Agreement as a labourer/construction worker, but the Applicant is not clear on whether he continues to hold any employment.
5. The Applicant submitted that the Pre-Action Requirements ("PARs") had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Letters of 4 January 2023, 10 January 2023 and 18 January 2023 had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
6. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave by email
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement
 - (vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 2 March 2018;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £300 per calendar month payable in advance;

- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 10 January 2023;
- (iv) The Respondent has been in continuous arrears of rent since August 2019;
- (v) The Respondent is in arrears of rent amounting to £1,917.29 at the date of the CMD;

- Reasons for Decision

8. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

9. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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

(2) (2).....

(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—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should 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 which should 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.

10. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

11. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since August 2019. No explanation had been given by him as to the reason for falling into arrears. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.
12. The Applicant had submitted an application via email to the Tribunal on 3 May 2023, seeking permission to amend the application to include reliance on ground 12A of Schedule 3 of the said 2016 Act. This application was refused. Ground 12A requires the applicant to demonstrate that the Respondent owed the equivalent of at least six months' rent at the date the Notice to Leave was served. This was not the case here. The arrears level at the date of service of the Notice were £1,080, which equated to just over three months' of rent. Ground 12A could therefore not be established.
 - Decision
13. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

F Watson

Legal Member/Chair

8 June 2023
Date