



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/23/2309

Re: Property at Flat 6, 97 Stonelaw Road, Rutherglen, Glasgow, G73 3EE (“the Property”)

Parties:

Mr Brian McAvoy, 11G Greystone Avenue, Rutherglen, Glasgow, G73 3SN (“the Applicant”)

Mr Perrin Smith, Flat 6, 97 Stonelaw Road, Rutherglen, Glasgow, G73 3EE (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of his private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 28 September 2023, by teleconference. The Applicant was represented by Mrs Elder of Aberdeen Considine & Co., solicitors. The Respondent was on the call in person.

- Findings in Fact

1. The Respondent leases the Property from the Applicants under a private residential tenancy with a start date of 11 July 2022.
2. In terms of the tenancy agreement, rent of £750 is due on the eleventh day of each month.
3. On 1 June 2023, the Applicant sent a notice to leave to the Respondent, indicating an intention to rely on Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application for an eviction order to follow.
4. The notice to leave was accompanied by a letter complying with the pre-action protocol set out in regulations by the Scottish Ministers.
5. As at 1 June 2023, the Respondent had been in arrears of rent for 9 consecutive months.
6. The Respondent has not made any payments of rent since the notice to leave was served.
7. As at the date of the CMD, the Respondent has been in rent arrears for 13 consecutive months, totalling £5,893.13.
8. The Respondent contacted the Applicant's agents approximately two weeks prior to the CMD to offer to pay £1,000 per month (including rent and overpayment towards arrears): which offer was refused.
9. The Respondent has suffered from periods of no or little employment since February 2023; but is now contracted for a year on a five-days-per-week basis. He considers that the most he can pay towards the arrears is £250 per month, starting from 11 October 2023.

10. The Respondent previously made a payment arrangement with the Applicant in December 2022, but did not keep to it.

11. During the periods he was unemployed, the Respondent did not apply for universal credit or other benefits.

12. The Respondent lives at the Property alone; although he has a seven-year-old son who was staying with him until the current uncertainty around the stability of his tenancy arose.

- Reasons for Decision

13. Ground 12 is made out. The Respondent has been in arrears for many more than 3 months; and the Tribunal concluded that it was reasonable to grant an eviction order, on account of that fact.

14. There was not any real dispute between the parties in relation to the principal facts of the case, as set out above. The Respondent did question the manner in which the rent account was set out, which he suggested did not show consistent charges across different entries. He did not himself put forward an alternative account to demonstrate any inaccuracy in the Applicant's account and was not able to answer what he thought the correct figure for any arrears was; although he did accept he was in arrears. The apparent issue was explained by the Applicant's representative as being due to the monthly charge translating to different daily rates, depending on the length of the month in question. The Tribunal was satisfied with this explanation, which was not questioned by the Respondent.

15. The arrears have persisted for almost the whole tenancy and are now at a significant level. The Respondent presented as being unreliable in understanding his financial position and his ability to address the arrears. Although he stated he would be in a position to pay £250 towards the arrears per month (which would take just less than two years to clear them), the Tribunal did not find this offer a credible or realistic one. He was vague in his

responses to any questions asked regarding his finances, including as basic a question as when he would receive his first pay from his new job, or what he understood the current level of arrears to be. Even on his own account, his job would only be projected to last for the next year. He linked the arrears entirely to the fact that he had suffered period of unemployment and presented his new job as the solution; but there was no explanation offered for the arrears that preceded his periods of unemployment, which he stated began in February 2023. He had not attempted to mitigate the impact of that unemployment by applying for benefits. He had previously failed to keep to a payment arrangement. The Tribunal considered that all of these points supported the conclusion that the arrangement could not be carried through and that an eviction order should therefore be made.

- Decision

Eviction order granted.

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.

N Young

18/10/2023

Legal Member/Chair

Date