

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/22/1897

**Re: 15 Durward, East Kilbride, Glasgow, G74 3PB
 (“the Property”)**

Parties:

**Miss Debra Davidson, 11 Minehead Way, Stevenage, Hertfordshire, SG1 2HU
 (“the Applicant”)**

**Miss Rebecca Linney, 15 Durward, East Kilbride, Glasgow, G74 3PB
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and John Blackwood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/1897 took place at 10am on Friday 21 October 2022 by teleconference call (“**the CMD**”). The Applicant was not present at the CMD but was represented by Miss Gillian Matthew (“**the Applicant’s Representative**”) of Bannatyne Kirkwood France & Co. The Respondent was not present at the CMD but was represented by Vicki McLanders (“**the Respondent’s Representative**”) of Shelter Scotland. The clerk to the Tribunal was Ailsa Taylor. This case was conjoined with case reference FTS/HPC/CV/22/1898 and heard at the same time.

DECISION

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

BACKGROUND

1. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the

schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application was dated 15 June 2022 and was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondent dated 31 October 2019 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 21 April 2022 from Your Move, as agent for the Applicant, addressed to the Respondent at the Property (“**April Notice to Leave**”), which stated that the eviction ground was that the Respondent was “in rent arrears over three consecutive months”, that an application for an eviction order would not be submitted to the Tribunal before 22 May 2022 and that a statement of arrears was enclosed which appeared to state that there was a credit balance of £220 (as opposed to rent arrears) as at 7 April 2022.
 - c. an e-mail dated 21 April 2022 addressed to the Respondent (using the e-mail address for notices stated in the Tenancy Agreement), which attached the Notice to Leave.
 - d. the required notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 15 June 2022 sending it to the local authority.
 - e. letters from Your Move, on behalf of the Applicant, with regard to outstanding arrears, dated:
 - i. 25 May 2021, which stated that the total arrears were £1,530, and
28 October 2021, which stated that the total arrears were £625,

both of which (amongst other things) stated that the Respondent’s “failure to address this matter is a breach of your tenancy agreement” before going on to urge the Respondent to contact Your Move, giving details of where to find further information on potential financial help, and warning the Respondent that if she did not “take steps to repay the rent due, this could result in your landlord seeking an eviction order...to end the tenancy. Once a notice to leave is served, you... will have **6 months’ notice** before your landlord can obtain an order for eviction.”
 - ii. **11 January 2022**, which stated that the total arrears were **£2,010**, and (amongst other things) gave details of where to find further

information on (i) potential financial help and (ii) her rights in relation to the recovery of rent arrears, and warning the Respondent that if she did not “take steps to repay the rent due, this could result in your landlord giving you notice to end the tenancy. Once a notice to leave is served, you... will have **2 months’ notice** before your landlord can obtain an order for eviction.” – which will be referred to in this decision as the “**First 2022 Letter**”; and

iii. **21 January 2022**, which stated that the total arrears were **£695**, and (amongst other things) gave details of where to find further information on (i) potential financial help and (ii) her rights in relation to the recovery of rent arrears, and warning the Respondent that if she did not “take steps to repay the rent due, this could result in your landlord seeking an eviction order...to end the tenancy. Once a notice to leave is served, you... will have **6 months’ notice** before your landlord can obtain an order for eviction.” – which will be referred to in this decision as the “**Second 2022 Letter**”;

4. In response to a request from the Tribunal’s administration team, a copy of an earlier notice to leave dated 31 January 2022 from Your Move, as agent for the Applicant, addressed to the Respondent at the Property (“**January Notice to Leave**”) was provided, which stated that the eviction ground was that the Respondent was “in rent arrears over three consecutive months” and attached a “Tenancy Receipts Report” which report referred to “Rent arrears £1,390” and “Non-rent arrears £815” but failed to set out clearly the amount of the rent arrears or how it had built up (nor explain what “Non-rent arrears” meant) but nor did it state the date before which an application to the Tribunal would not be made.
5. The January Notice to Leave was sent under cover of a letter from Your Move, on behalf of the Applicant, dated 31 January 2022 (“**January NTL Letter**”) which stated that the Applicant “will require possession of the [Property] on 02/08/2022” and that it was giving “formal Notice to Leave the premises occupied by you... by 02/08/2022”.
6. A notice of acceptance of the application was issued dated 11 August 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 15 June and 12 July 2022. However, the Tribunal administration team also confirmed to the Applicant’s representative that “*The inhouse convenor has accepted the application however the relevance of regulation 5 of the Coronavirus (Scotland) (Early Expiry of Provisions) Regulations 2022 remains a live issue. Please expect to provide legal arguments as to the validity of the notice to leave at the case management discussion. We also note that the rent statement attached to the notice to leave appears to be wrong and the tribunal will also require to be addressed on this as well.*”
7. The possession/eviction ground stated in the application form was ground 12 of schedule 3 to the 2016 Act.
8. The Respondent had provided written representations, which included the following:

“I was 1st served a NTQ in November 2021, as the notice states that the landlord intended to sell the property, however in January 2022, I received a notice as I was in rent arrears.”

“I then received another notice to quit in April (when evictions could go ahead).”

“...I feel that with being served 3 different notices since November 2021, which has caused me stress and anxiety.”

9. The Applicant’s representatives had provided written submissions in advance of the CMD, which the Respondent’s Representative confirmed that they had only received on the day preceding the CMD. In summary, those submissions focused primarily on the January Notice to Leave and submitted that it was not a valid notice to leave and so the provisions of the Coronavirus (Scotland) (Early Expiry of Provisions) Regulations 2022 (“**2022 Regulations**”) did not apply, as there was only one valid notice to leave, being the April Notice to Leave.
10. An application to amend the sum claimed from £2,415 to £3,117.33 was made on behalf of the Applicant on 7 October 2022 and was accompanied by an updated rental schedule (“**Updated Rental Schedule**”), which stated that, as at 30 September 2022, the arrears of rent were £3,117.33.
11. The Tribunal noted that the Applicant was the registered landlord of the Property.
12. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number LAN211052).
13. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

14. The Respondent’s Representative confirmed that the Respondent accepted that the arrears of rent were £3,117.33, as set out in the Updated Rental Statement.
15. The Applicant’s Representative confirmed that a notice to leave had been issued in 2021 on the basis of an eviction ground relating to the Applicant wishing to move back into the Property. She explained that this was linked to the Applicant having applied for a job in the area but, when she was not successful (and so she wasn’t then moving back to the area), eviction on this ground was not pursued.
16. In addition to the written submissions made by the Applicant’s representatives in advance of the CMD, oral submissions were invited from and made by both the Respondent’s Representative and the Applicant’s Representative in turn with regard to the validity (or not) of the January Notice to Leave. In summary, the Respondent’s Representative submitted that the clear statement of a date in the January NTL Letter “cured” the defect in the January Notice to Leave itself (with regard to the omission to state the date before which proceedings would not be commenced). In summary, the Applicant’s Representative disagreed and

submitted that the January NTL Letter was not part of the January Notice to Leave and so could not render it valid.

17. In relation to the April Notice to Leave, the Applicant's Representative explained that there was an error in the statement of arrears which accompanied it in that the numbers in the column entitled "Running Total" had been inverted and so it should be read such that the amount given for 7 April 2022 (£220 credit) is the amount showing at the bottom of that column and the amount given for 30 September 2021 (£2,635 arrears) at the top, with the other numbers reordered accordingly in between. Even if that were to be done, the Applicant's Representative was unable to explain why the amount of rent arrears given for 7 April 2022 in the agreed Updated Rental Schedule (£2,425 arrears) was not consistent with £2,635 (as in the statement attached to the April Notice to Leave, as reordered) nor why the amount of arrears given for 30 September 2021 in the Updated Rental Schedule (£625 arrears) was not consistent with £220 credit (as in the statement attached to the April Notice to Leave, as reordered).
18. In part 3 of the April Notice to Leave, it indicated that the Applicant was "seeking eviction under the above ground for the following reasons: You are in rent arrears of over three consecutive months" and that the "Statement of arrears enclosed" provided "evidence to support the eviction action". Accordingly, the "Statement of arrears" was crucial because there was no detail of the rent arrears given in part 3.
19. In relation to the pre-action requirements, the Applicant's Representative confirmed that the Applicant was relying upon the First 2022 Letter and the Second 2022 Letter (as well as the two letters sent in 2021) as fulfilling the pre-action requirements in connection with the April Notice to Leave.
20. The Applicant's Representative agreed that the rent arrears amount in the First 2022 Letter was correct but that the rent arrears amount in the Second 2022 Letter had not been completed "fully", it being accepted that the rent arrears amount in the Second 2022 Letter was not consistent with the amount as at the same date in the Updated Rental Schedule (and which had been agreed as correct).
21. The Respondent's Representative indicated that there was a lot of confusion for the Respondent as a result of three notices to leave and the different/conflicting information provided by or on behalf of the Applicant.
22. The Tribunal was addressed by both the Applicant's Representative and the Respondent's Representative on whether or not it was reasonable to grant an eviction order.
23. In summary, the Applicant's Representative submitted that:
 - a. There had been arrears since September 2021 (and so over 12 months);
 - b. The amount of the arrears was high;
 - c. Despite assurances from the Respondent, she has not made her rent payments in full;

- d. Whilst she appreciated that it may be stressful, given that the Respondent had dependents, the Respondent would be supported by the local authority;
- e. She understood that the Respondent's discretionary housing benefit had stopped; and
- f. The pre-action requirements had been fulfilled and the letters indicate that the Respondent should seek help but she did not appear to have done so until very recently.

24. In summary, the Respondent's representative submitted that:

- a. The Applicant had not complied with the pre-action requirements because the information provided was not clear;
- b. The Respondent has two children (aged 7 and 9) living with her and who go to the local school, and who would also be made homeless;
- c. The Respondent was willing to enter into a repayment plan, albeit that it was accepted that she had not made any proposal to the Applicant (or its representatives) in response to the First 2022 Letter or Second 2022 Letter;
- d. The Respondent was being supported to make applications for grants and other financial support, and indeed had made one for discretionary housing payment on 7 October 2022;
- e. The Respondent had commenced new employment and was working 20 hours per week at £9.65 per hour;
- f. The Respondent would continue to receive universal credit;
- g. The Respondent had health issues and was receiving support from a counsellor;
- h. The Respondent had been making payments towards the rent;
- i. The Respondent continued to have support from a Homeless Prevention Officer, who had been involved since the section 11 notice was sent; and
- j. The Respondent had not sought legal advice until contacting Shelter Scotland in early October 2022.

FINDING IN FACT

25. It had been accepted by the Respondent's Representative that the Respondent had "been in rent arrears for three or more consecutive months", the Updated Rental Statement having been accepted as being accurate.

26. Accordingly, the Tribunal found that there were arrears of rent of £3,117.33 as at 30 September 2022 and that there had been rent arrears for three or more consecutive months.

27. The Tribunal noted that this meant that "all or part of the rent in 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" (which was until at least 30 September 2022).

28. This meant that, if it reached the stage of considering whether it is reasonable to issue an eviction order against the Respondent, the Tribunal was required to consider the extent to which the Applicant had complied with pre-action requirements before applying for the eviction order.

29. However, in the first instance it was necessary to consider the terms of the April Notice to Leave.

30. The definition of a notice to leave is set out in section 62(1) of the 2016 Act. The Tribunal was satisfied that it was in writing and correctly specified the day on which the Applicant expected to become entitled to make an application for an eviction order.

31. In relation to the requirements in section 62(1)(c) and (d) of the 2016 Act, the Tribunal referred to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (as amended), which include at schedule 5, the prescribed form of notice to leave, which sets out directions in relation to the completion of part 3 of that form, as follows:

“State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.”

“It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that.”

32. Accordingly, it was necessary to consider the detail of the April Notice to Leave and whether or not it met these requirements. The Tribunal found, on the balance of probabilities that:

- a. the basic description of the eviction ground had been included in part 3 of the April Notice to Leave – “You are in rent arrears over three months”; but
- b. because the detail required was not included in part 3 and a cross-reference was instead given in part 3 to the statement of arrears which accompanied it, it was necessary for that statement of arrears to set out the required detail; but
- c. as described above in paragraph 17, the statement of arrears was not clear or accurate, both in terms of the rent arrears amounts having been included in the wrong order in the “Running Total” column (and, on the face of it, showing a credit balance of £220 rather than any rent arrears), and also in relation to the amounts included (even once reordered) being inconsistent with those set out in the agreed Updated Rental Schedule.

33. Accordingly, the Tribunal was not satisfied, on the balance of probabilities, that the April Notice to Leave met the requirements of section 62(1)(d), and potentially also section 62(1)(c), of the 2016 Act and so it was not a valid notice to leave.

34. As a result of this finding, it was not necessary to reach a conclusion on whether or not the provisions of the 2022 Regulations were engaged in connection with the January Notice to Leave and the April Notice to Leave.

35. However, the Tribunal had also considered the pre-action requirements in detail in connection with whether it would be reasonable to issue an eviction order against the Respondent in the context of compliance (or not) with the pre-action requirements before applying for the eviction order (had the Tribunal been satisfied, which it was not, that the April Notice to Leave was valid).

36. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 provides as follows:

(1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act(1), the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.

(2) The provision by the landlord to the tenant of clear information relating to—

- a. the terms of the tenancy agreement,
- b. the amount of rent for which the tenant is in arrears,
- c. the tenant's rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and
- d. how the tenant may access information and advice on financial support and debt management.

37. Based on the information provided to it, the Tribunal was not satisfied, on the balance of probabilities, that the Applicant (or Your Move):

- a. had provided anything other than passing reference to the Tenancy Agreement and had not provided "clear information" on its terms; nor
- b. had provided "clear information" on the amount of rent for which the tenant was in arrears, the Second 2022 Letter including an amount different to the (now agreed) amount of arrears as at that date. In addition, the First 2022 Letter and Second 2022 Letter included conflicting information on the period of notice to be given.

38. The Tribunal was not satisfied, on the balance of probabilities, that the First 2022 Letter and Second 2022 Letter met the pre-action requirements, in that neither alone nor taken together did they provide the "clear information" required.

39. In addition, given that that amount of rent for which the Respondent was in arrears by the date of service of the April Notice to Leave was significantly different to that stated in the First 2022 Letter and the Second 2022 Letter, the Tribunal noted that it would have expected updated "clear information" to be provided to the Respondent in advance of serving the April Notice to Leave, including updating the information previously provided on the required period of notice to that applicable as at the date when the April Notice to Leave was issued.

REASON FOR DECISION

40. As noted above, the Tribunal was not satisfied, on the balance of probabilities that the April Notice to Leave was valid and, even if it had been valid, given the failures to comply with the pre-action requirements, it would not have been reasonable for the Tribunal to grant an eviction order.

DECISION

41. The Tribunal refused the application under section 51(1) of the 2016 Act for an eviction order.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Pamela Woodman

21 October 2022

Chair

Date