



Decision with Statement of Reasons 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/23/0021

Re: Property at 13 Burnblea Gardens, Hamilton, ML3 6RN (“the Property”)

Parties:

Julie Baxendale, 61 Burnblea Gardens, Hamilton, ML3 6RW (“the Applicant”)

Kevin Burns, 13 Burnblea Gardens, Hamilton, ML3 6RN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (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 be granted against the Respondent.

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 24 November 2020.
2. The application was dated 1 January 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 23 September 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by Sheriff Officer service on 27 September 2022. (The Tenancy Agreement was silent as to modes of service.) The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12,

the body of the notice referred to arrears of £4,650 and detailed the arrears accumulated between June 2021 and September 2022. The rent stated in the Tenancy Agreement lodged was £425 a month, meaning the arrears as at the date of the Notice to Leave exceeded ten months of arrears. The Notice intimated that an application to the Tribunal would not be made before 29 October 2022.

4. During the course of the case management discussion, a motion was made to amend the application to include the additional ground of Ground 12A: “substantial rent arrears”. Reference is made to that motion below.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon South Lanarkshire Council on 1 January 2023 was provided with the application. There was no evidence of the Applicant providing pre-action protocol information in standard form to the Respondent, but the Notice to Leave served included all notes for the tenant (which includes much of the same content).

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 11 May 2023 at 14:00. We were addressed by the Applicant. There was no appearance from the Respondent.
7. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicant said that there had been no recent contact from the Respondent since before the application was lodged. She said he has ceased to respond to texts or telephone calls. (Screenshots of text messages were lodged by the Applicant showed two messages in October 2022, the last one dated 24 October 2022 that started: “I’ll now be getting advice on why I can be evicted”, but the full message was not lodged.) The Applicant said the Property still had signs of life (lights going on and off, and windows being opened and closed) and that her husband had seen the Respondent drive away in his van two days earlier. She was satisfied that he remained in attendance but that he was not engaging with her.
8. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 14:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
9. At the CMD, the Applicant confirmed that the application for eviction was still insisted upon and that no further payments of rent had been received since the Notice to Leave. She stated that the arrears were now £8,975, which was over 21 months of arrears. The Applicant said that the Respondent never paid the full rent or on time, and there was a history of making promises to pay and not paying, arranging to meet and then not attending, and giving similar reasons why payment was late (often related to a delay in him being paid for his work as a window and door fitter).

10. She said the Property was a one-bedroom flat and was not adapted for the Respondent's needs. She did not believe that the Respondent currently lived with anyone nor that he had any children. (She had met a partner of the Respondent's in July 2021, when she met to take a payment from the partner on the Respondent's behalf, but she believed they were no longer together.) She referred to the Respondent failing to take care of the Property, including replacing the front door with an internal door which did not properly fit the frame, and breaking the glass in the communal door when he had locked himself out of the close when drunk. She had no information of the Respondent ever applying for benefits, or having payment issues arising due to unpaid benefits. She believed he worked for someone and there had been no breaks in his employment.
11. In regard to the Applicant's circumstances, she had no other rented properties. She had purchased the Property with money from an inheritance so it was mortgage-free, but the rental income was intended to meet her own mortgage. As the Respondent was not paying, she had required to take extra shifts at work to cover her own mortgage, and was thus able to spend less time with her children. She had a long-term health condition which was exacerbated by stress, and she found the Respondent's behaviour and non-payment very stressful. She had found her condition recently to be exacerbated, and she thus believed that the stress from the situation was causing this.
12. In regard to Ground 12A, the Applicant had not been aware of this new ground and – as far as we could tell – had not received any standard information from the Tribunal's clerks regarding the effect of the 2022 Act and the possibility of seeking amendment when lodging her application. She had not known of the possibility of seeking to amend to include a further ground until we asked her about her intentions at the CMD. She then made a motion to amend the application to rely on the additional ground of Ground 12A, being substantial arrears over 6 months. We considered the matter and agreed it was reasonable to grant the oral motion for amendment under Rule 13(2) given the substantial arrears and the lack of communication and cooperation from the Respondent. We considered, but rejected, the need to continue the application to intimate the new ground on the Respondent, given his recent lack of communication and cooperation, and his failure to engage with the Tribunal process. In terms of section 52(5)(b) of the 2016 Act, we then continued with consideration of the application on the basis of Grounds 12 and 12A.
13. In regard to pre-action requirements, the Applicant stated that she had (mistakenly) understood the requirements were no longer in force. She accepted that she had not sent the Respondent any specific pre-action requirement letter, but referred to the text messages where she had provided significant forbearance to the Respondent over a prolonged period. We further noted that the terms of the Notice to Leave contained the full notes for tenants and a detailed breakdown of the arrears, those providing the Respondent with the majority of the information required under the pre-action requirements. The Applicant asked us to consider the application notwithstanding the lack of any other letter to the Respondent.

14. No motion was made for expenses.

Findings in Fact

15. On or about 24 November 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 24 November 2020 ("the Tenancy").
16. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £425 a month in advance on the 1st day of each month.
17. On 23 September 2022, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £4,650.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 29 October 2022.
19. The Applicant's Sheriff Officer served a copy of the Notice to Leave on the Respondent on 27 September 2022.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, initially relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
21. As at the date of the Notice to Leave, rent arrears were in excess of ten months.
22. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon South Lanarkshire Council by the Applicant on 1 January 2023.
23. The Applicant failed to provide the Respondent with pre-action protocol information by any separate letter after the date of the Notice to Leave.
24. As of 11 May 2023, the Respondent remained in arrears of rent in the amount of £8,975 which is equivalent of over 21 months of rent.
25. The Respondent does not claim to have paid any amount of the arrears of £8,975 remaining as at 11 May 2023.
26. The sum of arrears remaining as of 11 May 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. On 5 April 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 11 May 2023 by Sheriff Officer.
28. The Respondent has no dependents.

29. The Property is not specially adapted with the use of the Respondent.

Reasons for Decision

30. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent, albeit that it referred only to Ground 12 (as the 2022 Act was not yet in force).

31. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

(1) ...the tenant has been in rent arrears for three or more consecutive months. ...

(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.

32. Ground 12A of the said Schedule applies if:

(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*
- (ii) a payment on account awarded under regulation 93 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.

33. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. As Ground 12A is satisfied, Ground 12 is satisfied.
34. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. The arrears are substantial and there is the absence of any engagement by the Respondent on payment of the arrears. Given the substantial arrears, we do not think the absence of further pre-action information is appropriate. In any case, the Respondent texted after the Notice to Leave indicating that he was seeking advice, so the purpose of any pre-action requirements was material fulfilled. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.
35. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A. We do not also grant under Ground 12 at this time, as any order under that would require to be suspended in terms of the 2022 Act and thus cause confusion as to the order being issued. Had we not allowed the amendment of the application (and so considered Ground 12A), we would have been satisfied to grant the order under Ground 12 however (subject to the appropriate suspension under the 2022 Act).

Decision

36. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12A of Schedule 3 of that Act.

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

J Taylor

J Conn

11 May 2023

Legal Member/Chair

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Date