



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

Chamber Ref: FTS/HPC/EV/22/3636

Re: Property at Old Smiddy Cottage, Glencarse, PH2 7LX (“the Property”)

Parties:

Morris Young Leslie, Errol Airfield, Errol, PH2 7TB (“the Applicant”)

Mr Roddy Whannel Angus, Old Smiddy Cottage, Glencarse, PH2 7LX (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (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 should be granted against the Respondent in favour of the Applicant.

Background

- 1.** The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave with Sheriff Officer Certificate of Service and rent statement were lodged in support of the application.
- 2.** A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 6 February 2023 at 2pm.
- 3.** A CMD took place on the 6 February 2023. The Applicant was represented by Ms Currie, solicitor. The Respondent did not participate. Prior to the CMD the Tribunal received a telephone call from Ms Lisa Whannel, the Respondent’s partner. She stated that the Respondent had been admitted to hospital and was unable to participate in the CMD. She confirmed this by email, stating that he had been admitted because of chest pains. She also stated that he was

recovering from lung cancer. She was asked to confirm whether a postponement was being requested. She confirmed this to be the case, although her response was not received until after the start of the CMD.

4. During the CMD, Ms Currie told the Tribunal that she had also been contacted by Ms Whannel by telephone. She said that the case has a protracted history and that she has been in correspondence with the Respondent over the last year. An illness had been mentioned but no details provided. Ms Currie said that her instructions were to seek an order for eviction and oppose a postponement. The Tribunal noted that an updated rent statement had not been lodged. Ms Currie said that she was waiting for this to be provided by the Applicant but could confirm that no payments have been received since the previous statement was lodged. The Tribunal also noted that the rent statement appeared to show that no payments had been made by the Respondent since June 2020 but that the Notice to leave had not been served until July 2022 and the application submitted in October 2022. Ms Currie advised the Tribunal that the Applicant had delayed taking proceedings due to COVID 19, the related legislation and because he had been trying to work with the Respondent to get the rent paid. However, although repayment arrangements were agreed, no payments were made by the Respondent. The Respondent's partner got in touch last month. It is understood that she also resides at the property. She indicated that she wanted to get things sorted out but did not appear to appreciate the level of the arrears.
5. Following a brief adjournment, the Tribunal determined that the CMD should be continued to another date to give the Respondent the opportunity to participate, provide details of his defence to the application and medical evidence. The Applicant was also directed to provide an updated rent statement prior to the continued CMD.
6. The parties were notified that a further CMD would take place on 27 March 2023 at 10am by telephone conference call. Prior to the CMD Ms Currie lodged updated rent statements. At 9.20am on 27 March 2023, the Respondent's partner sent an email stating that the Respondent had a hospital appointment which could not be changed and that he wanted a further postponement. A reply was issued which stated that the request was refused and that the CMD would proceed.

Summary of discussion at the CMD

7. The Legal Member advised Ms Currie that an email had been received which appeared to be from the Respondents partner, seeking a further postponement. Ms Currie confirmed that she wanted the CMD to proceed and was seeking an eviction order. The Tribunal was satisfied that the CMD should proceed as the request had been made at short notice, had not come from the Respondent or an authorised representative and had not been accompanied by any evidence. It was also noted that the previous CMD had been adjourned for a similar reason.

8. Ms Currie referred to the updated rent statement which shows a balance now due of £14,950. She stated that the last payment made to the rent account was in September 2020. There has been no recent contact from the Respondent although he did get in touch following the last CMD and asked for a copy of the Notices so that he could approach the Local Authority about his housing situation. Ms Currie told the Tribunal that Mr Angus has said in the past that he has a medical condition but did not provide details or any evidence. She understands that he may not be working because of this but that he resides with his partner who has indicated that she runs a cleaning business. No one else resides at the property. The cause of the rent arrears is unknown. The Applicant has a large number of rental properties and always tries to work with tenants who have fallen into arrears to give them the opportunity to make repayment arrangements. Although there were a number of offers of repayment, the payments themselves did not materialise. The Applicant made the decision to seek eviction due to the very high level of arrears.

Findings in Fact

9. The Applicant is the owner and landlord of the property.
10. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
11. The Respondent is due to pay rent at the rate of £450 per month.
12. The Respondent has been in arrears of rent since August 2019.
13. The Respondent owes the sum of £14,950 in unpaid rent to the Applicant.
14. The Applicant served a Notice to leave on the Respondent on 4 July 2022.
15. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
16. The Respondent resides at the property with a partner.

Reasons for Decision

17. The application was submitted with a Notice to Leave dated 1 July 2022 together with a Sheriff Officer certificate of service which establishes that the Notice was served on 4 July 2022. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application

to the Tribunal can be made is 2 August 2022.

18. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
19. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
20. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
21. The Tribunal is satisfied that the Respondent currently owes the sum of £14,950 in unpaid rent and that no payments have been made to the rent account since September 2020. The account has been in arrears since September 2019. The Respondent has therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave and the date of the CMD.
22. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The application was accompanied by a letter dated 14 March 2022, addressed to the Respondent. This provided information in compliance with the protocol.
 - (b) The Respondent did not participate in the CMD and did not provide the Tribunal with any information regarding his personal circumstances. Prior to the first

CMD, the Respondent's partner sent an email stating that he had been admitted to hospital and could not participate in the CMD. The email also provided some information about alleged medical conditions. No evidence was provided to support the statement. The Tribunal decided to adjourn the CMD to another date to provide the Respondent with the opportunity to participate. In a note issued to parties following the CMD, the Tribunal indicated that the respondent should provide information about his proposed defence to the application and medical evidence. He did not do so.

- (c) The Applicant's representative was able to confirm that the Respondent resides at the property with his partner. From information previously provided, it is thought that the Respondent may not be working but that his partner has her own cleaning business. However, the Applicant does not know whether the Respondent is in receipt of, has claimed or is entitled to benefits. In the circumstances, there is no evidence before the Tribunal to suggest that the rent arrears have been caused, in whole or in part, by a delay or failure in the payment of a relevant benefit.
- (d) The rent arrears are substantial, and no payments have been made for more than two and a half years.

23. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable to grant an order for eviction.

Decision

24. The Tribunal determines that an eviction order should be granted against the Respondent.

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.