



Statement of Decision under Rule 38(3) of *The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017* (contained in Schedule 1 of the *Chamber Procedure Regulations 2017* (SSI No 328)) (“the Procedure Rules”) as amended in relation to a request for permission to appeal under section 46(3) (a) of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/0497

Re: Property at 1/3 47 Springbank Gardens, Glasgow, G31 4QN (“the Property”)

Parties:

LARS HOUSING TRUST, F3 Buchan House, Enterprise Way, Dunfermline, Fife, KY1 8PL (“the Applicant”)

MR JOHN MCCRATE, 1/3 47 Springbank Gardens, Glasgow, G31 4QN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

1. DECISION

The Tribunal refused to give permission to appeal in terms of Rule 38 of the Procedure Rules.

2. BACKGROUND

This was an application for an eviction order dated 15th February 2023 and brought in terms of Rule 109 (Application for an eviction order) of the Procedure Rules.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with its application copies of the private residential tenancy

agreement, notice to leave and proof of service, section 11 notice and proof of service, rent increase notice, rent arrears statement, and various pre-action correspondence.

All of these documents and forms excepting possibly the notice to leave had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 28th March 2023, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held at 14:00 on 3rd May 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Donnelly, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of the Procedure Rules.

Miss Donnelly confirmed that rent arrears at the time the notice to leave was served were £3,583.50, and as of the date hereof date were £6,350.50. Miss Donnelly invited the Tribunal with reference to the application and papers to grant the order sought on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Miss Donnelly, under reference to the pre-action correspondence, advised the Tribunal of various attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears, and advising him about where he might obtain advice.

The notice to leave relied on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £553.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement, which rental was increased to £569.50 per month with effect from 1st May 2022. The Respondent had been in substantial rent arrears as at the date of the notice to leave, and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to him.

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12A of Schedule 3 to the Act provides that it is an eviction ground that the tenant has substantial rent arrears. That ground applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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 that the Tribunal is satisfied that it is reasonable to issue an eviction order.

In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider 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 the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that ground 12A had been established. The tenant was in substantial arrears of rent in respect of one or more periods and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on that ground. The Tribunal was satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears. The Tribunal was further satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent were substantial. The Respondent had failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

The Tribunal issued its Decision and Statement of Reasons granting the order sought on 3rd May 2023, which was sent to the Respondent by post on 9th May 2023.

By e-mail to the Tribunal dated 17th May 2023, the Respondent sought permission to appeal the Tribunal's Decision. The Respondent stated that his grounds for seeking permission to appeal were that he was not represented or present at the Case Management Discussion as he was told via e-mail by his housing manager that it was being held on 5th May 2023 at 2pm which led him to believe that the date had changed.

Further, the Respondent stated that he had sent in a time to pay letter explaining his reasoning for falling behind with his rent payments. He had started to turn his life

around after suffering mental health and relationship issues. He sought to have the eviction order overturned.

The Applicant opposed the application for permission to appeal by e-mail from its representative to the Tribunal dated 24th May 2023. The Applicant's representative provided with that e-mail copy e-mail correspondence between the Applicant and the Respondent. In the Respondent's e-mail of 19th April 2023, he states "I am aware that we have a hearing on 3rd May 2023". The Tribunal papers served on the Respondent clearly identified the date of the Case Management Discussion, which was also identified in the Applicant's representative's application to amend the application of 14th April 2023 which was intimated to the Respondent.

Finally, the Respondent had made no payments in respect of rent since November 2022, and arrears of rent remained as at 24th May 2023 at £6,350.50. Various repayment arrangements had been agreed in the past, none of which the Respondent adhered to.

The Applicant's representative opposed the Respondent's application for permission to appeal the Tribunal's decision upon the basis that the application did not identify any error in law.

3. GROUNDS OF APPEAL AND REASONS FOR DECISION

The application is timeous in terms of Regulation 2 of the *Scottish Tribunals (Time Limits) Regulations 2016/231*.

Rule 37 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that a party making application for permission to appeal must identify the alleged point of law on which the person making the application wishes to appeal.

Rule 38 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that the Tribunal must decide whether to give permission to appeal on any point of law.

There are no points of law specified by the Respondent in his e-mail seeking permission to appeal. The Respondent does not set out any legal bases for an appeal. The Respondent's e-mail states no arguable legal grounds and it raises no points of law.

Section 46(2)(b) of the *Tribunals (Scotland) Act 2014* provides that an appeal is to be made on a point of law only. Section 46(3) of that Act provides that an appeal requires the permission of the First-tier Tribunal. Section 46(4) of that Act provides that such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

As the Respondent has not set out any legal basis or bases for an appeal and raises no point of law, the Tribunal cannot be satisfied that there are arguable grounds for the appeal, and accordingly leave to appeal is refused.

APPEAL PROVISIONS

An applicant aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed.

N. Kinnear

8th June 2023

Legal Member/Chair

Date