



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/22/3776

Re: Property at 10 Easterwood Place, Coatbridge, ML5 1BH (“the Property”)

Parties:

Miss Moira Jacques, 60 Alexander Street, Airdrie, ML6 0BD (“the Applicant”)

Mr Barrie Ruddick, 10 Easterwood Place, Coatbridge, ML5 1BH (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 13 October 2022. The documents produced were a Tenancy Agreement dated 15 December 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies)(Scotland) Act 2016 (“Act”) dated 24 August 2022 (“Notice to Leave”) with attached rent statement showing arrears of £1749.39; email to the Respondent dated 24 August 2022 attaching the Notice to Leave; copy emails from the Applicant’s Representative to the Respondent regarding rent arrears dated 26 May, 8 and 16 June 2022; notification to the Local Authority in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 13 October

2022 and sheriff officer's execution of service certifying service of the Application on 21 December 2022.

Case Management Discussion (CMD) on 15 February 2023

2. A CMD took place before the Tribunal on 15 February 2023 by teleconference. Ms Vikki McGuire of the Applicant's Representative was in attendance. There was no appearance by the Respondent. Ms McGuire told the Tribunal that the Applicant and the Respondent had entered into a payment plan in terms of which the Respondent was to pay the monthly rent plus an additional £400 each month. In addition the Respondent had made a payment of £1400 on 1 February 2023. Ms McGuire said that the Applicant wanted to continue the CMD for 3 months to allow the payment plan to be monitored.

CMD 2 May 2023

3. The Second CMD took place by teleconference on 2 May 2023 at 10am.
4. The CMD was conjoined with an application for a Payment Order under Reference FTS/HPC/CV/22/3781.
5. The Applicant was again represented by Ms McGuire. The Respondent was not present. No written representations had been received from the Respondent by the Tribunal.
6. Ms McGuire informed the Tribunal that since the last CMD that the Respondent had defaulted in his payment plan which had been agreed between the parties. She said that the Respondent was aware of the CMD taking place as she had received an email from him at 16.15 on Friday 28 April 2023 stating that he had been dealing with "personal stuff" and that he was aware of the hearing taking place as he had been served with documentation by the Tribunal. He had enquired in the email whether the Applicant would now be seeking an Eviction Order.
7. Ms McGuire said that she was seeking an Order for Eviction and an Order for Payment from the Tribunal.
8. The Tribunal explained that as there had been no formal notification of the CMD to the Tribunal's satisfaction that a further CMD would be required for this purpose. The Tribunal stated that it would ensure that the next CMD was notified to the Respondent by Sheriff Officers.

CMD 21 June 2023

9. The third CMD took place by teleconference on 21 June 2023. It was again a conjoined CMD with the application for a Payment Order as detailed above.

10. An updated rent statement had been provided to the Tribunal setting out that the arrears of rent amounted to £5,299.39 as at 6 June 2023.
11. The Applicant was represented by Mr Stuart Mathieson. The Respondent was present.
12. The Tribunal went over the paperwork and the prior procedure with parties. The purpose of the CMD was explained, and that in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Rules') the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision.

The Applicant's Position

13. Mr Mathieson said that an updated rent statement had been provided. He sought an Order for Eviction and an Order for Payment. He said that he was aware that a Payment Plan had been set up with the Respondent and that this had not worked out.
14. The Applicant landlord is a small locally based individual. The Applicant's Representative manages 3 properties for the Applicant. Mr Mathieson was unable to say whether there was an outstanding mortgage over the Property or not. He stated that he believed that the landlord may potentially sell the Property to recoup some of the losses incurred if the Order for Eviction were granted. Albeit the Applicant was sympathetic to the Respondent's position he sought Eviction and a Payment Order now.

The Respondent's Position

15. The Respondent said that he was really embarrassed by the situation he had found himself in. He had first entered into the tenancy of the Property as he had separated from his partner a few years ago. Initially everything regarding the tenancy had gone fine. He had then got into financial difficulties. He had been in gainful employment as a self employed plasterer. He said that he had a very good job which had involved him building movie sets and working away from home. He had never been behind with his bills previously. The last time that he was in full-time employment however was the end of February 2023. He said that he understood that the Respondent would want the money due to be paid. He said that he was no longer working and had made a claim for Universal Credit last month. He believed that he would be due his first payment on the 13 July 2023 and this would include a Housing Benefit claim. He said that he understood that this would not be enough and would not address the arrears. He accepted that it was his fault that he had fallen into arrears.
16. The Respondent said that he had tried his best to obtain a council house tenancy but given that he was in arrears with a private landlord that this, "did not look good", and he had not been thus far successful.

17. His personal circumstances were that he lived at the Property alone and his two children aged 4 and 16 years spent every Tuesday and Thursday night and stayed over every second weekend.
18. Regarding the payment plan which had been set up he accepted that he had made only one payment at the end of February 2023.
19. The Respondent was able to read out to the Tribunal the various e-mails which he had received from the Applicant's Representatives between 28 April 2023 and 19 May 2023. He was clearly aware of the ongoing tribunal process. He re-iterated that the whole thing was very embarrassing. He candidly stated that he has developed an alcohol problem and was currently waiting to attend a course to address that with Jericho House in Greenock. He said that the Benefits Agency knew that he needed some help with this area of his life. He accepted that the rent arrears had built up as he was in denial, and was not accepting that he required any help.

Findings in Fact

20. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 18 December 2020;
 - (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £550 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 24 August 2022;
 - (iv) On 24 August 2022 the Respondent was in rent arrears over three consecutive months;
 - (v) The Respondent has been in continuous arrears of rent since April 2022;
 - (vi) The Respondent is in arrears of rent amounting to £5,299.39 at the date of the CMD

Reasons for Decision

21. *Section 51 of the 2016 Act states as follows:*

51 (1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

22. *Ground 12 of Schedule 3 to the 2016 Act states as follows:*

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) (2).

(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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to— (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

23. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of

section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Respondent by his own admission had only contacted the Benefits Agency six weeks ago.

24. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since April 2022. He had fallen into arrears after developing an alcohol addiction issue, subsequently encountering financial problems, and then being out of employment. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the Respondent, offer him assistance and signpost him to appropriate advice agencies. It appeared that the Respondent had attempted to enter into a payment plan with the Applicant but had not made any payments since February 2023. He had not sought help with his addiction issues and sought benefits until relatively recently. The Tribunal also took account of the Applicant's circumstances and balanced these against the competing interest of the Respondent. The Applicant is a small landlord with only three properties. His circumstances were such that he required to consider selling the Property to recoup some of the losses he had incurred. In all the circumstances, the Tribunal was satisfied that it was reasonable to grant the Order.

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.

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Legal Member/Chair

21 June 2023

Dated