



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/23/0772

Re: Property at 2 Covanburn Avenue, Hamilton, ML3 7PX (“the Property”)

Parties:

Mr Saqib Ali, 5 Rockmount Avenue, Thornliebank, G46 7BU (“the Applicant”)

Declan Kearney, Michelle Gray, 2 Covanburn Avenue, Hamilton, ML3 7PX (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

This was an application for an eviction order dated 6th March 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondents, and provided with his application copies of the private residential tenancy agreement, notice to leave with proof of service by e-mail, section 11 notice with proof of service, rent arrears statement, and pre-action protocol 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* and the *Coronavirus (Scotland) Act 2020*, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 14th June 2023, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 20th July 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr McHugh, solicitor. The Respondents did not participate, nor were they represented. The Respondents have 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 First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr McHugh explained that the Applicant suspected that the Respondents had left the Property, but he was not sure that was the case, and they had not returned the keys nor advised him that they were leaving. To the contrary, after receipt of the notice to leave, they had texted the Applicant advising that they were not leaving and that he would require to take the appropriate procedural steps to remove them.

The Tribunal noted that the notice to leave specified a date before which an application would not be submitted to the Tribunal for an eviction order of 19th January 2023. The notice was dated 16th December 2022. On that basis, the date specified on the notice should have been 15th January 2023.

The Tribunal further noted that service of the notice to leave was made by e-mail upon the Respondents. However, the written lease agreement did not provide for that option, but instead elected that all notices should be served in hard copy personally or by recorded delivery.

Mr McHugh, after briefly liaising with a colleague, confirmed that his colleague had also sent the notice to the Respondents by recorded delivery. He had the posting slip, but the track and trace facility did not reveal whether it was delivered or not. Further, the Applicant also hand-delivered the notice to the Respondents.

Mr McHugh suggested that he could, in the course of the next two weeks, lodge affidavits by both his colleague and by the Applicant confirming the position regarding service of the notice to leave, together with an up-to-date rent arrears statement showing the current level of arrears.

The Tribunal considered that it would be appropriate to adjourn the Case Management Discussion to a further date to allow Mr McHugh to lodge the two affidavits and the rent arrears statement.

In the event that these were lodged and were sufficient to satisfy the Tribunal that the order sought should be granted, the Case Management Discussion need not take place, and the Tribunal would simply issue its decision and order upon the papers.

By e-mail to the Tribunal dated 1st August 2023, the Applicant's representative provided affidavits by both his colleague and by the Applicant confirming the position regarding service of the notice to leave, together with an up-to-date rent arrears statement showing the current level of arrears. The affidavits confirmed that the Applicant's solicitor had posted the notice to leave to the Respondents by recorded delivery on 16th December 2022, and that he had provided a hard copy to the Applicant, who had hand-delivered the notice to leave to the Respondents that same day.

The updated rent arrears statement confirmed that rent arrears at the time the notice to leave was served were £3,900.00, and as at 1st August 2023 were £13,000.00. The Tribunal was invited with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The pre-action correspondence produced showed various attempts to contact the Respondents asking them to make contact with the Applicant in order to discuss options to assist them with their rent arrears, and advising them about where they might obtain advice.

The notice to leave relied on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £1,300.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement. The Respondents had been in arrears since 7th August 2022 as at the date of the notice to leave, and they had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

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.

Section 52(2)(3) and (4) of the Act provide:

"(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so."

Section 54 of the Act provides:

“(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months,

(iii) that the tenant has substantial rent arrears,

(iv) that the tenant has a relevant conviction,

(v) that the tenant has engaged in relevant anti-social behaviour,

(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).”

Section 62 of the Act provides:

“(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent

Section 73 of the Act provides:

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to—

- (a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),
- (b) the document by which a referral is made to a rent officer under section 24(1),
- (c) the document by which an application is made to a rent officer under section 42(1), and
- (d) a notice to leave (as defined by section 62(1)).”

The relevant period in relation to the notice to leave was 28 days in terms of section 54 of the Act. In terms of section 62 of the Act, the notice to leave required to specify the day on which the Applicant expected to become entitled to make an application for an eviction order to the Tribunal. That date was the day falling after the relevant period of 28 days had expired, which relevant period commenced on the day when the Respondent received the notice to leave, which is assumed to be 48 hours after it was sent.

The date of the notice was 16th December 2022. That being so, the correct date which ought to have been specified in the notice to leave before which the Applicant expected to become entitled to make an application for an eviction order to the Tribunal ought to have been 15th January 2023.

However, the Tribunal took the view that in circumstances where any error in the date provided a longer period than was required in terms of sections 54 and 62, it did not make the notice to leave invalid as it did not affect the effect of the document in terms of section 73 of the Act in circumstances where the tenant received a longer period of notice than required.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact 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.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further 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 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 Respondents 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 Respondents 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 are substantial. The Respondents have failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

Decision

In these circumstances, the Tribunal made an eviction order as sought in this application.

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.

N Kinnear

30th August 2023

Legal Member/Chair

Date