



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

Chamber Ref: FTS/HPC/EV/21/2757

Re: Property at 132A Bonnygate, Cupar, Fife, KY15 4LF (“the Property”)

Parties:

New Belfort Ltd, Advantage Business Centre, 132-134 Great Ancoats Street, Manchester, M4 6DE (“the Applicant”)

Mr Colin McBeath, 132A Bonnygate, Cupar, Fife, KY15 4LF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application, received by the Tribunal on 8 November 2021, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 20 November 2017, at a rent of £495 per month, and a copy Rent Statement showing arrears of £5,145 at the date of the application. The Statement showed that no rent had been paid since 11 December 2020.

3. The Applicant also provided the Tribunal with a copy of a Notice to Leave dated 16 March 2021, with evidence of service by sheriff officers on 18 March 2021. It informed the Respondent that the Applicant was seeking eviction under Ground 12 of Schedule 3 to the 2016 Act, and that an application would not be submitted to the Tribunal for an Eviction Order before 23 October 2021.
4. The Applicant stated in the Notice to Leave that the Respondent had consistently refused to enter into dialogue regarding the arrears or a payment plan. He had been approached by telephone, text message and email. In face-to-face dialogue, he had claimed that he had been furloughed from work and that he had the money to pay the rent but had chosen not to do so as a form of “passive resistance”, the basis of which he had not rationally explained.
5. The Applicant also provided the Tribunal with a copy of a letter to the Respondent dated 9 March 2021, in which the Applicant indicated willingness to enter into a payment plan and signposted the Respondent to sources of support, including Discretionary Housing Payments, the Scottish Welfare Fund, advice on the Scottish Government website, Shelter and Citizens Advice. The Applicant contended that this showed compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondent had failed to engage in communications with the Applicant in relation to the arrears, or any aspect of the tenancy and was not allowing the Applicant access to the Property. In the circumstances it was reasonable that an Order for repossession should be granted.
6. On 18 November 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 9 December 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

7. A Case Management Discussion was held on the afternoon of 22 December 2021. The Applicant was represented by Ms Kirstie Donnelly of TC Young, solicitors, Glasgow, and Mrs Jill Edwards, one of the Applicant’s Directors was also present. The Respondent was not present or represented.
8. The Applicant’s representative told the Tribunal that the rent arrears were now £6,630 and that nothing had been paid by the Respondent since December 2020. The Respondent had acknowledged the rent arrears but had simply decided not to pay. Mrs Edwards said that she had last spoken to the Respondent in October 2021, when the Notice to Leave expired and he had stated that he had no intention of moving out. She believed that he was still resident at the Property, which he occupied on his own.

Reasons for Decision

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to determine the application without a Hearing.
10. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.
11. Ground 12 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
12. The Tribunal was satisfied that the Respondent had been in arrears for three or more consecutive months, that the rent was more than one month in arrears at the date of the Case Management Discussion and that there was no evidence before the Tribunal to indicate that the Respondent's being in arrears was attributable in whole or in part to the delay or failure in the payment of a relevant benefit.
13. The Tribunal was also satisfied that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.
14. The Tribunal noted that the Respondent had also not made any written representations to the Tribunal, so had not contested the allegation that he had wilfully withheld the rent, and that he had not been present or represented at the Case Management Discussion.
15. The view of the Tribunal was that, in all the circumstances of the case and taking into account all the evidence before it, the requirements of Ground 12 had been met and, given the level of arrears, the length of time over which the arrears had built up, with no rent paid since December 2020, and the failure of the Respondent to engage with the Applicant or his letting agents, it was reasonable to issue an Eviction Order.

16. The Decision of the Tribunal was unanimous

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.

**George
Clark** _____
Legal Member/Chair

20 January 2022
Date