



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/22/3470

Property : 68D Alexander Street, Coatbridge ML5 3JL (“Property”)

Parties:

Kyle Boswell, 9 Parkside Street, Rosyth KY11 2LP (“Applicant”)

Dial a Home, 312 Duke Street, Glasgow G31 1QZ (“Applicant's Representative”)

Bethany Lynch (otherwise known as Bethany Borden), 68D Alexander Street, Coatbridge ML5 3JL (“Respondent”)

Legal Services Agency Ltd, 3rd Floor, Fleming House, 134 Renfrew Street, Glasgow G3 6ST (“Respondent’s Representative”)

Tribunal Members:

**Joan Devine (Legal Member)
Ahsan Khan (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement dated 27 May 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 18 August 2022 ("Notice to Leave"); email from the Applicant’s Representative to the Respondent dated 18 August 2022 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 21 September 2022

and copy email from Ross Waters to the Applicant's Representative dated 30 September and 4 November 2022.

Case Management Discussion ("CMD")

A CMD took place before the Tribunal on 12 April 2023. Reference is made to the note of the CMD. The outcome of the CMD was that the Tribunal determined to fix a continued Case Management Discussion and to issue a Direction setting out the further information that would assist the Tribunal.

A continued CMD took place before the Tribunal on 26 June 2023. Reference is made to the note of the continued CMD. The Applicant's Representative indicated that she wished to amend the grounds for eviction to include ground 12A, substantial rent arrears. The Respondent sought a postponement to allow her to obtain legal advice. The outcome was that The Tribunal granted the postponement request and determined to fix a continued CMD.

Continued CMD

A continued CMD was fixed to take place on 13 September 2023. In advance of the continued CMD the Applicant's Representative lodged with the Tribunal a second Notice to Leave dated 28 June 2023 which specified the ground for eviction was 12A. A statement of rent arrears was also lodged showing arrears of £4342.59 for the period 31 August 2022 to 31 July 2023. The Respondent's Representative contacted the Tribunal by email dated 5 September 2023 and stated that the Respondent consented to an order for eviction being granted on the basis of ground 12A. Parties' Representatives told the Tribunal that further procedure was agreed and asked the Tribunal to deal with matters administratively as follows :

1. Discharge the CMD fixed for 13 September 2023.
2. Allow the application for eviction proceeding under reference EV/22/3470 to be amended in terms of section 52(5)(b) of the Private Housing (Tenancies)(Scotland) Act 2016 to include ground 12A (substantial rent arrears) as a ground for eviction.
3. Grant an order for eviction on the basis of ground 12A only and not the grounds originally referred to in the application.

The Tribunal agreed to proceed as requested.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 27 May 2022 ("Tenancy Agreement").

2. The rent in terms of the Tenancy agreement was £570 per month.
3. A Notice to Leave was served by email on 18 August 2022.
4. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 18 September 2022.
5. A second Notice to Leave was served by email on 28 June 2023.
6. At the date of service of the second Notice to Leave the rent arrears were £3817.15 which exceeds a sum equivalent to 6 months' rent
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 21 September 2022 and 7 August 2023.
8. The Respondent has failed to pay the rent in full for the period 31 August 2022 to 31 July 2023.
9. The Respondent has rent arrears of £4342.59.
10. The rent arrears are substantial in that they exceed an amount that is equivalent of 6 months' rent under the tenancy.

Reasons for the Decision

The Tribunal determined to allow the Application to be amended in terms of section 52(5)(b) of the Act to include ground 12A (substantial rent arrears) as a ground for eviction and to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

The Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12A which states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*
- (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if –*
 - (a) *the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

(b) the cumulative amount of those arrears equates to or exceeds an amount that is 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

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

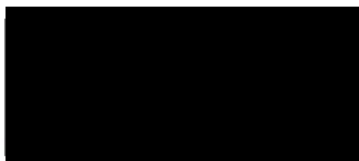
The Tribunal considered the second Notice to Leave and the statement of rent arrears lodged and determined that the ground for eviction had been established. The Respondent's Representative had told the Tribunal that the Respondent consented to the grant of an order for eviction. In the circumstances the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.



**Joan Devine
Legal Member**

Date : 12 September 2023