



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/1751

Re: Property at Flat 3/5, 83b Candleriggs Court, Glasgow, G1 1LF (“the Property”)

Parties:

Nevis Properties Limited, 6th Floor Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicants”)

Ms Pauline Torley, 83b Candleriggs Court, Flat 3/5, Glasgow, G1 1LF (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that the order for possession be GRANTED under s51 of the Act.

1. BACKGROUND

This is an application to bring to an end a Private Residential Tenancy (“PRT”) between the parties commencing 1 May 2020 in view of rent arrears which the Applicants state accrued in the sum of £6609-04, up to 1 June 2022, per Rent Statement lodged for period from 22 January 2021 to said date. Said Statement also confirmed that the Respondent had been in arrears for a period in excess of 3 consecutive months during the period in question in that the Respondent was in arrears throughout the whole of the period covered by said Statement. Following upon sundry procedure, a Case Management Discussion (“CMD”) was fixed for 5 September 2022.

Prior to the CMD, preliminary consideration of the supporting documentation for this application confirmed that Notice to Leave (“NTL”) dated 20 October 2021 was given to the Respondent by e-mail on the same date, sent to her e-mail address as specified in the Clause 1 (“TENANT”) clause of the PRT, based

on the Respondent being in rent arrears for 3 or more consecutive months (Ground 12 of Schedule 3 of the Act). The appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003 on 1 June 2022. This application, dated 8 June 2022 based on said NTL, was acknowledged by the Tribunal on 10 June 2022. The Respondent was sent information which appeared to satisfy the Pre-Action Requirements for this type of application on 10 June 2022. In addition, the Tribunal also had regard to an exchange of correspondence between the parties between about 26 November 2020 and 29 January 2021, which indicated some discussion about resolution of rent arrears then outstanding but which did not appear to come to fruition.

Accordingly, the Respondent had been afforded the requisite 6 months notice period required for a Ground 12 application, leading to acceptance of the application by the Tribunal by Notice of Acceptance of 22 June 2022.

At all times the Tribunal was aware that in relation to this eviction case, it required to be satisfied not only that the formal requirements regarding same had been complied with but also that it was reasonable to make the order for repossession.

2. CASE MANAGEMENT DISCUSSION 5 SEPTEMBER 2022

At 11-20am on the morning preceding the CMD scheduled for 2pm, the Tribunal received an e-mail from the Respondent, stating:--

“Good morning

My name is Pauline Torley. I am writing to request a postponement of the Case Management Discussion due to take place at 14.00 today, 05 September.

The reasons for my request are:

I am unable to attend due to work commitments.

I am trying to arrange legal representation however there is not enough time to do so before the hearing today.

I have received advice to apply for a postponement to allow representation to be sorted.

I am aware that this decision is at the discretion of the Tribunal and I apologise for the timing of my request. This has been an exceptionally stressful time and I have not managed this in the way I should have until now.

Case reference FTS/HPC/EV/22/1751 DUE TO TAKE PLACE AT 14:00 TODAY.

Please let me know if I can provide any further information.

Kind regards

Pauline Torley”.

The Applicants’ views were canvassed on this request but they were not amenable to it.

The Tribunal then instructed that the Respondent be told that the CMD would take place and she would require to be in attendance to address it on her postponement request, failing which the Tribunal might consider the case in her absence.

The Tribunal was not made aware of any response to this from the Respondent and was mindful of the procedural background of this application, dating from at least October 2021 ie nearly 11 months prior to the CMD. In addition, it noted

that intimation of the CMD was made by sheriff officer letter box delivery on 27 July 2022, over 7 weeks prior to the CMD. Nonetheless, the Tribunal was prepared to be addressed by the Respondent as to a possible postponement. The CMD duly commenced by teleconference shortly after 2pm on 5 September 2022, when the Applicants were represented by their agent, Caitlin McKendrick, from Tay Letting Ltd., Glasgow.

The Respondent was neither present nor represented, despite clearly being aware of the CMD, per sheriff officer intimation of same and communication this morning, as referred to previously.

Accordingly, notwithstanding the Respondent's absence, the Tribunal considered the CMD could proceed. Clearly, however, since the Respondent was not present nor represented, no facts relating to her ability to ensure payment of the rent or background in which the rent fell into arrears were capable of agreement, nor was any submission made in support of postponement of the CMD.

Miss McKendrick confirmed she wished the CMD to proceed, notwithstanding the Respondent's absence and previously advised request for a postponement. She advised that there had been no further payments of rent from the Respondent since the last date of the Rent Statement previously referred to, although payments had been received arising out of a wages arrestment following upon previous civil proceedings for recovery of rent arrears. Her information was that 3 separate payments had been made of £395-43, £402-34 and £402-29 on each of 30 June and 2 and 31 August respectively. However, against rent due of £925 per month, arrears continued to accrue and the total due now stood at £8183-98.

She further advised that there had been some discussion in about May/June of this year towards reaching an amicable resolution of matters but then the Respondent had failed to engage further, leading to commencement of these proceedings.

So far as she was aware, the Respondent was in full time employment in a Scottish Government post and had a school age daughter.

She did not know if the Respondent had received any further covid related monies, apart from the "Energy Saving" Hardship Fund payments of £850 and £925 on 7 April 2021, shown on the Rent Statement

In the circumstances of such a substantial amount of arrears having now accrued and there being no reasonable proposals to address same, she asked the Tribunal to find the rent arrears part of Ground 12 established and on that account to consider it reasonable to make the order for eviction now sought. Obviously, in view of the Respondent's failure to attend, there was no challenge to any of what was stated on behalf of the Applicants nor verification of the personal circumstances of the Respondent.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 1 September 2022 in the sum of £8183-98 arising out of a PRT between the parties commencing 1 May 2020. Said arrears include non-payment of rent for a period in excess

of 3 consecutive months during at least the period between 22 January 2021 and 1 June 2022.

4. REASONS FOR DECISION

The Tribunal was satisfied that arrears of £8183-98 had accrued per the Rent Statement to 1 June 2022, updated as at the CMD date and that the Respondent had been in rent arrears for 3 or more consecutive months.

Having found that the Respondent was due and liable for arrears of rent as above stated, the Tribunal was of the view that Ground 12 founded upon by the Applicants in this application had been established.

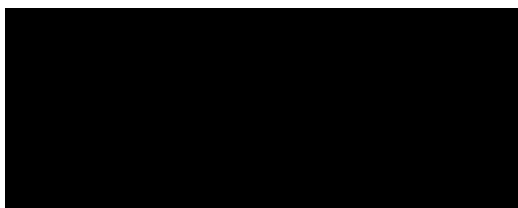
Furthermore, in view of said level of arrears which had accrued, the Tribunal was satisfied it was just and reasonable to make the order sought.

5. DECISION

To make the order for possession sought by the Applicants.

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.



5 SEPTEMBER 2022

Legal Member/Chair

Date