



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

Chamber Ref: FTS/HPC/EV/21/1124

Re: Property at 41 Meldrum Court, Dunfermline, KY11 4XR (“the Property”)

Parties:

Mrs Beverley Simpkins, Morgans, 33 East Port, Dunfermline, KY12 7JE (“the Applicant”)

Mr Alan Ritchie, Mrs Lindsey Ritchie, 41 Meldrum Court, Dunfermline, KY11 4XR; 20 Russell Court, Dunfermline, KY11 4XW (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an Order for Eviction under Ground 12 of Schedule 3 to the 2016 Act

Background

1. By application dated 10 May 2021 the Applicant applied for an order for eviction and possession of the Property on the basis of Ground 12 of Schedule 3 to the 2016 Act.
2. The papers before the tribunal comprised; -
 - Private Residential Tenancy Agreement (PRT) dated 24 March 2020
 - Notices to Leave dated 26 October 2020
 - Certificate of Service dated 26 October 2020 being e-mails sent to the Respondent
 - Notice under section 11 of the Homelessness etc (Scotland) Act 2003
 - Rent Statement covering the period 24 March 2020 to 10 May 2021 showing arrears of rent to be £6172.60

- Pre-application Protocol Letters sent by e-mail to the Respondent dated 19 March 2021
 - Letter to the tribunal from the Applicant's Representative Morgans Solicitors dated 3 June 2021.
3. By decision dated 17 June 2020, a Convenor of the HPC having delegated power for the purpose, referred the application to the tribunal. A letter of intimation dated 26 July 2021 and Notice of the Case Management Discussion (CMD) to be held on 27 August 2021 at 10am by teleconference call together with the case papers was served on the Respondent by Sheriff Officers on 28 July 2021. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Citation of that date.

Case Management Discussion (CMD)

4. Ms Linda Kettles Lettings Manager with the Applicant's Representative attended on behalf of the Applicant. The Respondent neither appeared nor was represented.
5. The tribunal was satisfied that Notice of the CMD had been duly served on the Respondent together with a full set of papers relating to the application and the Respondent had chosen neither to attend nor make representations. It was content to proceed in the absence of the Respondent. The tribunal was satisfied that due notice had been given to the Respondent to which there was a failure to respond.
6. Ms Kettles sought an Order for Eviction from the tribunal.

Findings in Fact

7. The Applicant is the Landlord of the Property, and the Respondent is the tenant in terms of a PRT entered into between the parties dated 24 March 2020.
8. A Notice to Leave was served on 26 October 2020 dated the same date. That Notice intimated that the Landlord was seeking recovery and possession of the Property on the basis that there were rent arrears over 3 months consecutively.
9. The Notice period specified in the notice expired on 30 April 2021.
10. The Notice was issued prematurely and should have been served on 25 November 2020.
11. The Notice was served by e-mail and therefore the notice period should have commenced on 27 November 2020.
12. The date of expiry of the notice period properly calculated is 28 May 2021.
13. The application was lodged with the tribunal on 10 May 2021.
14. The notice period is not invalid in terms of section 10 of the Coronavirus (S) Act 2020.

15. A Notice in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 had been intimated to the local authority.
16. In terms of section 52(4) of the 2016 Act the Tribunal considers it reasonable to entertain the application.
17. It is reasonable to grant the order.

Reasons for Decision

18. Firstly, the tribunal considered the issue of the Notice to Leave which was dated 26 October 2020 and gave notice to the Respondent to leave by 30 April 2021 which is a 6-month period.
19. The Notice to Leave stated that the reason that eviction was being sought was on the basis of the fact that the Respondent was in rent arrears over 3 consecutive months.
20. In terms of the PRT the rent payable was £750 per calendar month. The first payment was due on the start date of 24 March 2020 and thereafter the PRT provided that payments must be received on or before the same date each calendar month.
21. The Notice to Leave also set out that the eviction was being sought for the following reasons.

“We received notice for the 31 August 2020 due to a marriage break up. Lindsey moved out on the 1 August and Alan was to move out by 31 August 2020 and pay the difference in rent from 24 August to 31 August as Lindsey had paid rent to the 23 August 2020. Alan has still not moved out and there is now 3 months’ rent due of £2250.”
22. The PRT provided in terms of communication that all communication, including notices will be made by the e-mail addresses included in the PRT. The Notices to Leave were served using the e-mail addresses included in the PRT.
23. In their letter to the tribunal dated 3 June 2021 the Applicant accepted that the Notice to Leave should not have been served until 25 November 2020 and agreed that it was incorrectly served on 26 October 2020. They agreed that at that time although 3 rent payments had been missed that the Respondents were only 2 months in arrears at that time. They stated that this was due to the ambiguous wording of the Act which states

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

24. They referred to the fact that that the second Respondent had vacated the Property in August 2020 following an incident of domestic violence in which there was police involvement. She had made all rental payments prior to this, and no rental payments have been made since she left the Property.

25. Furthermore, the first Respondent was in paid employment and had contacted Morgans solicitors by telephone on 30 September 2020 regarding the rent. He stated that he was expecting two months' wages the following week and would pay the two months' rent by the end of that week. He also stated that he was planning on staying on at the Property. However, the promised payment was not received, and no payment has been made since.

26. The Coronavirus (Scotland) Act 2020 (the 2020 Act) states; -

Errors in notices

10(1) Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

(a) the notice is not invalid by reason of that error, but

(b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.

(2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.

(3) This paragraph applies to—

(a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,

(b) a notice served on a tenant under section 14(2)(a) or 36(2)(a) of the Housing (Scotland) Act 2001,

(c) a notice served on a tenant under section 19 or 33(1)(d) of the Housing (Scotland) Act 1988,

(d) a notice served on a tenant in accordance with section 112(1) of the Rent (Scotland) Act 1984,

while this paragraph is in force.

27. In this case therefore the Notice to Leave should have been served on 25 November 2020. As it was served by e-mail the notice period should have commenced on 27 November 2020. In terms of section 10 (1) (a) of the 2020 Act the notice is not invalid as a result of that error.

28. Section 54 of the 2016 Act states; -

54 Restriction on applying during the notice period

(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,

(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).

29. In this case the application to the tribunal was made on 10 May 2021 and should not have been submitted until 28 May 2021.

30. Section 52 of the 2016 Act sets out.

- 52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(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.

(5)The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a)is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b)has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

31. In this case it is argued that reliance is placed on section 52 (4) of the 2016 Act that it is reasonable for the application to be entertained and indeed granted.

32. Reliance for that proposition is based upon the following: -

- The rent arrears are continuing to accrue
- The Respondent promised to make good the arrears in August 2020 and has paid nothing since that time
- The continuing non-payment of rent implying an intention not to pay further
- The prejudice that the Applicant would face in serving another Notice requiring a further 6-month period with no rent being paid. As at the date of the CMD the Applicant is 13 months in arrears, if another Notice was required the Respondent would be 19 months in arrears of rent by the time an application for eviction could be entertained.

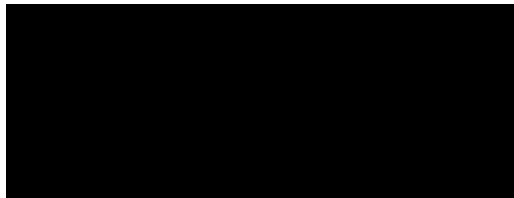
33. In considering the reasonableness of the Order being granted the tribunal enquired about the Respondent's position. The second Respondent has left in August 2020 and not returned. The First Respondent has not engaged with the Applicant at all. He is believed to be in employment as an IT specialist and is choosing not to pay rent. Ms Kettles said that she had contact with his sister who referred to him as being "borderline alcoholic". He is not understood to have rent arrears due to benefit difficulties and is understood to have been receiving furlough payments from his employers. He is refusing to engage with the Applicant other than to allow access for a gas safety inspection. He has allowed the gas engineer only entry. Neighbours of the Property have complained to the Applicant regarding rubbish being burned in the back garden. The Applicant is concerned about the state of his property. Ms Kettles said that the Applicant already had a Payment Order against the Respondent from the tribunal regarding rent arrears but that nothing had been paid towards that thus far.

34. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, and in the absence of the Respondent it was able to determine the application at the CMD.

35. The tribunal accepted the information in the file and as provided by Ms Kettles and accepted her submissions in relation to reasonableness. It was satisfied that in the circumstances it was reasonable to grant the order for eviction.

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.



Legal Member/Chair: Yvonne McKenna

Date 27 August 2021