



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/20/0444

Re: Property at 3 Jura Street, North Muirton, Perth, PH1 3AR (“the Property”)

Parties:

Miss Dianne Stewart, 98 Crammond Place, North Muirton, Perth, PH1 3BW (“the Applicant”)

Simple Approach Letting Agents, 13-15 St Leonards Bridge, Perth, PH2 0DR (“the Applicant’s Agent”)

Mr Aaron Fleming, 3 Jura Street, North Muirton, Perth, PH1 3AR (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

Background

- 1 By application dated 7 February 2020 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Notice to Leave dated 6 January 2020 stating that proceedings for possession will commence no earlier than 6 February 2020 and citing ground 12, together with proof of email delivery to the Respondent;
 - (ii) Copy Private Residential Tenancy Agreement between the parties;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Perth and Kinross Council; and
 - (iv) Rent Statement
- 2 By Notice of Acceptance of Application dated 29 June 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 20 August 2020. Due to the imposition of restrictions arising from the Covid-19 pandemic a direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. Notification of the date and time, together with instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers on 30th July 2020.
- 3 By email dated 11 August 2020 the Respondent requested a postponement of the Case Management Discussion due to his work commitments. He advised that he had recently started employment with the local authority and wouldn't finish work until 5pm. He further advised that he had taken the sum of £8,999.99 from his pension which he would pay towards the arrears and expected to receive this within the next four weeks. On that basis the Legal Member agreed to postpone the Case Management Discussion to 23 September 2020.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 23 September 2020. Mrs Bernadette O'Connor, an employee of the Applicant's Agent, appeared on behalf of the Applicant and was accompanied by Ms Kerry Burgess as an observer. The Respondent was present.
- 5 The Legal Member explained the purpose of the Case Management Discussion. She noted that both parties had submitted written representations shortly prior to the meeting and confirmed that parties had received all the documentation submitted. She explained the legal basis for the application and the statutory test that the Tribunal required to apply under paragraph 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 before asking the parties to address her on their respective positions.

- 6 Mrs O'Connor explained that Mr Fleming hadn't paid rent himself at any point during the tenancy. Any payments received had come from a fund. He had on numerous occasions agreed to pay the arrears back and had not stuck to any of his promises. The Applicant was now facing arrears and needed the property back to mitigate her losses. Mr Fleming continued to reside there and not pay rent, despite now working full time. Mrs O'Connor confirmed that as at the date of the Case Management Discussion the rent arrears stood at £5749.32.
- 7 Mr Fleming accepted that he was due to pay the sum of £5749.32 and these were the arrears outstanding as at that date. He advised that he had experienced issues with employment, having had a criminal conviction. He had spoken to the Applicant to offer payments, but explained that he had to look after himself even though he owed money. He had applied for the sum of £9,000 from his private pension fund to cover the arrears and the expense of obtaining alternative accommodation if needed, following the outcome of the Case Management Discussion. That money wouldn't be available until 9th November, but in the meantime he had offered to pay £500 on Friday 25th September. Mr Fleming accepted that he had previously made offers of payment to the Applicant which had not been honoured. He advised that there had been faults with the property on numerous occasions, but ultimately he had not paid the rent that was due and he accepted that. The Legal Member asked Mrs O'Connor whether the landlord would be prepared to accept the revised offer from Mr Fleming. Mrs O'Connor explained that due to previous agreements having been broken the Applicant had no confidence in Mr Fleming as a tenant and whilst she would still expect any outstanding rent arrears to be paid, she would still be seeking to have the property back.

Relevant Legislation

- 8 The legislation the Tribunal must apply in its determination of the application are the relevant provisions of the Private Housing Tenancies (Scotland) Act 2016, namely Sections 1, 51 and Paragraphs 11 and 12 of Schedule 3:-

1 - Meaning of private residential tenancy

1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) 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, and

(b) 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,
(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Findings in Fact and Law

- 9 The parties entered into a Tenancy Agreement which commenced on 3 April 2019.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing Tenancies (Scotland) Act 2016.
- 11 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £500 per month.
- 12 Payments of £460.27 on 3 April 2019, £500 on 22 May 2019, £1,500 on 22 August 2019, £500 on 30 August 2019 and £250.68 on 1st February 2020 have been made to the rent account.
- 13 As at the date of the Case Management Discussion no further payments have been received other than those specified at paragraph 12.
- 14 On 6 January 2020 the Applicant's Agent delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 and confirmed that proceedings would not be raised any earlier than 6 February 2020.
- 15 The Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and complies with the provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
- 16 As at the date of service of the Notice to Leave arrears in the sum of £2000 were outstanding.
- 17 As at the date of the Case Management Discussion arrears in the sum of £5,749.32 were outstanding.
- 18 The rent account has been in arrears for three or more consecutive months.

- 19 The rent arrears are not a result of any delay or failure in the payment of a relevant benefit.
- 20 The provisions of paragraph 12(2) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 have been met.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The material facts in relation to the rent account and history of payments were agreed between the parties and the Tribunal therefore considered that a hearing was not required in the matter. The Tribunal also determined that it would not be reasonable to adjourn the Case Management Discussion in the face of the Respondent's offer of payment as the Respondent had accepted that offers of payment had been made to the Applicant in the past and not honoured. The Tribunal therefore considered it would be overly prejudicial to the Applicant if the matter were to be delayed any further in the absence of clear evidence of payments.
- 22 The Tribunal therefore considered the provisions of the Private Housing Tenancies (Scotland) Act 2016 and in particular paragraph 12 of Schedule 3. The Tribunal accepted that arrears of £2000 were outstanding when the Notice to Leave was served and, based on the submissions from the Applicant's Agent at the Case Management Discussion, that arrears had since risen to £5749.32 which was not disputed by the Respondent. He had been candid in his acceptance of his failure to pay rent and there was no suggestion that the balance would be covered by a relevant benefit.
- 23 The Tribunal was conscious that the application was not subject to the provisions of the Coronavirus (Scotland) Act 2020, having been lodged with the Tribunal on 7 February 2020. Accordingly the Tribunal had to apply the original unamended provisions of paragraph 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016. The Tribunal noted that there is no discretion available to it where the provisions of paragraph 12(2) have been met. Having made that finding the Tribunal was obliged to grant the order for repossession.
- 24 The Tribunal therefore made an order for repossession of the property in favour of the Applicant against the Respondent.

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.

R O'Hare

23 September 2020

Legal Member/Chair

Date