



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/20/1118

Re: Property at 33 Anderson Drive, Irvine, KA12 9HY (“the Property”)

Parties:

Asset Leading Investment, 59 Campsie Gardens, Glasgow, G76 7SE (“the Applicant”)

Mr Christopher Seddon, 33 Anderson Drive, Irvine, KA12 9HY (“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 22 April 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 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 North Ayrshire Council with proof of email delivery; and

(iv) Rent Statement

- 2 By Notice of Acceptance of Application 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 16 October 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.
- 3 By email dated 7 October 2020 the Applicant provided an updated rent statement as at 30 September 2020 confirming an arrears balance of £2705. By email dated 8 October the Respondent submitted written representations in response to the application. In summary the Respondent narrated a history of issues in his personal and professional life which had impacted on his ability to pay rent. He explained that he was looking for work and would be able to make payments towards the arrears once in employment. He apologised and confirmed his understanding of the seriousness of the situation he had found himself in.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 16 October 2020. The Applicant was represented by Lynsey Hughes from Hovepark Lettings. Mr Arshad Ali, a Director of the Applicant was also present. The Respondent was present and represented by Linda Millar from the In Court Advice service.
- 5 The Legal Member explained the purpose of the Case Management Discussion and noted that both parties had given intimation of their representatives in advance. The Legal Member proceeded to explain 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 Ms Hughes explained that there had been a history of rent arrears on the Respondent's part. Payments had been missed or had been sporadic. Ms Hughes confirmed the balance of arrears as £2705 as at the date of the Case Management Discussion which was in excess of one months rent. Ms Hughes further confirmed that the rent account produced by the Applicant and submitted by email on 7 October showed that there had been arrears for three or more consecutive months. The last payment to the rent account had been paid on 22 September.

- 7 Ms Millar explained that the Respondent did not deny the arrears were due. Another payment would be made on 22 October. The Respondent had experienced difficulties in terms of his employment and his mental health. He did realise the seriousness of the matter. Ms Millar advised that the Respondent would be able to pay £80 per month towards the rent from next week when he received his payment of universal credit. She asked if a short adjournment could be allowed to monitor payments.
- 8 The Legal Member asked Ms Hughes what the Applicant's position was in relation to the offer of payment. Ms Hughes explained that the Applicant would not be willing to accept any adjournment based on the Respondent's history. He had made repeated promises of payment which had been defaulted on.
- 9 The Legal Member asked Ms Millar whether the arrears were a result of any failure or delay in the payment of a relevant benefit. Ms Millar confirmed no benefits were due to the Respondent that would reduce the balance of arrears. She explained that the Respondent was aware of the provisions of ground 12 and as already stated he did not dispute the arrears were due.

Relevant Legislation

- 10 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.

51First-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

- 11 The parties entered into a Tenancy Agreement which commenced on 30 October 2019.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing Tenancies (Scotland) Act 2016.
- 13 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £475 per month.
- 14 On 4 March 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 3 April 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 £1060 were outstanding.
- 17 As at the date of the Case Management Discussion arrears in the sum of £2705 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 Tribunal accepted that previous offers of payment had been made and not honoured, as was evidenced by the rent account produced which was not

disputed by the Respondent. The Applicant was entitled to ask the Tribunal to grant the order sought in the application.

- 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 £1060 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 £2705 which was not disputed by the Respondent. Ms Millar had confirmed at the Case Management Discussion that the arrears were not a result of any failure or delay in the payment of a relevant benefit.
- 23 The Tribunal was conscious that the application was not subject to the provisions of the Coronavirus (Scotland) Act 2020, the Notice to Leave having been served prior to 7 April 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

Legal Member/Chair

Date