



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/EV/21/0350

Re: Property at 1 Castleton Crescent, Grangemouth, FK3 0BH (“the Property”)

Parties:

Mr Neil Gardner, Caerlaverock, Station Road, Polmont, Falkirk, FK2 0TY (“the Applicant”)

Miss Danielle Leary, 1 Castleton Crescent, Grangemouth, FK3 0BH (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent.

Background

- 1. This was a case management discussion held on 4th August 2021 to consider the application made by the Applicant dated 16th February 2021 for an eviction in terms of Rule 109 of the Rules and Section 51(1) of the 2016 Act. The ground on which possession is sought is Ground 12 of Schedule 3 of the 2016 Act. The CMD took place by teleconference because of the current coronavirus restrictions.**

- 2. The Respondent did not participate in the teleconference and the Tribunal was satisfied that the date and time of the case management discussion had been intimated to her.**
- 3. The Applicant participated in the teleconference.**
- 4. A previous case management discussion had been held on 28th April 2021.**
- 5. Findings in Fact**
 - 5.1 The Applicant and Respondent are parties to a private residential tenancy in respect of the Property which is dated 17th July 2019.**
 - 5.2 The Applicant is the owner of the Property and has title and interest to make the application by virtue of that ownership.**
 - 5.3 The monthly rent payable under the private residential tenancy agreement is £400.**
 - 5.4 As at 13th July 2021 there were rent arrears of £2,534.91.**
 - 5.5 The tenant has been in rent arrears between December 2019 and 4th August 2021.**

6. Finding in Fact and Law

It is reasonable that the order for eviction be granted.

Preliminary Matters

- 7. It was explained to the Applicant that, at the earlier case management discussion, the Tribunal had not considered it reasonable to grant the order on the basis that the rent arrears were reducing and that he had not satisfied it that he had complied with the pre-action requirements in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.**
- 8. The Applicant said that he had lodged an updated rent statement showing that the rent arrears as at 13th July 2021 were £2,534.91.**
- 9. The Applicant said that he had lodged copies of three text messages which he had sent to the Respondent attempting to obtain access to the Property to ensure that it continued to meet the Repairing Standard. He said that these messages had not been responded to and that he had not been able to get access to the Property.**

Discussion

10. The Law

The Provisions of Paragraph 12 of Schedule 3 of the 2016 Act were considered:

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.

11. The Provisions of Schedule 1 of the Coronavirus (Scotland) Act 2020 were considered and it was noted that, in terms of Schedule 1, Paragraph 3) (i), sub- paragraph (2) of Paragraph 12 of Schedule 3 of the 2016 Act was repealed.

12. The Tribunal explained to the Applicant that the consequence of that is that Ground 12 of Schedule 3 of the 2016 Act is no longer mandatory but discretionary and that it required to apply the provisions of sub-paragraph (3) of Ground 12 of schedule 3.

13. It was explained to the Applicant that the terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("Pre-

Action Requirements.”) potentially applied to the application before the Tribunal.

14. The terms of Schedule 1, Part 2 of the Coronavirus (Scotland) (No.2) Act 2020 were considered:

Private residential tenancy

5 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies in accordance with the modifications in this paragraph.

(2) Paragraph 12 of schedule 3 (rent arrears) has effect as if—

(a) after sub-paragraph (3) there were inserted—

“(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.”,

(b) after sub-paragraph (5) there were inserted—

“(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

15. The Tribunal had regard to the terms of the notice to leave which had been served on the Respondent on 14th July 2020. It referred to the ground on which an eviction order was being sought which was that the tenant, at the date of the Notice to Leave was in rent arrears over three consecutive months. It states that the tenant had been in rent arrears over a ten month period and refers to “October, November and

December 2019 in addition to January, February, March, April, May, June and July 2020.”

16. The Tribunal considered that the terms of the Notice to Leave were such that it required to consider to what extent, if any, the Applicant complied with the Pre-Action Requirements. The Notice to Leave referred partly to a period after 27th May 2020 which is the critical date for application of the Pre-Action Requirements. Mr Gardner said that he had a number of properties and had made his tenants aware of where they could get assistance if there were difficulties in paying rent. He thought he had produced a copy of what had been sent to the Respondent but the Tribunal did not have it. He said that he had included all the rent arrears in the notice although the grounds for eviction would be met in respect of rent arrears due prior to May 2020 and he referred the Tribunal to the updated rent statement and which showed that the Respondent was in arrears from October 2019, had made payments to deal with outstanding rent up to November 2019 and that no payment of rent was then made until payments were recommenced in August 2020 by the Department of Work and Pensions.
17. Mr Gardner said that he approached the Department of Work and Pensions and had been successful in having the rent paid to him direct since August 2020. He said that the DWP had, since, November 2020, made monthly payments of more than the rent of £400 and that he had applied any excess to the arrears. He said that, since December 2020, these monthly payments had been £474.32 but that they had then dropped to £440.99 in June 2021 and that £441.15 had been paid in July 2021. He said that he had written to DWP seeking an explanation of the sums being paid but that none had been forthcoming. He said that the payments from DWP had led to the level of arrears dropping to £2,534.91.
18. Mr Gardner said that he last had contact with the Respondent in February 2021 when the Property’s gas safety check had been due. He said that the Respondent engaged with this and that the required inspection had been carried out by the gas engineer.
19. Mr Gardner said that he had concerns because he had not been able to get access to inspect the Property so that he can satisfy himself that it still meets the repairing standard as required by the Housing (Scotland) Act 2006.
20. Mr Gardner said that he had driven past the Property on a couple of occasions and had noticed that there was a broken window and that

blinds were broken. He said that he had had to pay a bill for repair to the front door as a result of the police requiring to force entry. At the previous case management discussion, he said that the lock on the door had been changed as a result of the police activity and that the Respondent has not provided him with a key. Mr Gardner said that he had had to deal with complaints from a neighbour and that the whole situation was causing him worry, particularly around concerns for the condition of the Property.

21. Mr Gardner said that he has a mortgage over the Property together with insurance costs and that, during the period of eight months where he received no payments of rent, he had met these costs from his own resources. He said that around a year ago he had paid around £13,500 for his share of a common repair to the Property and that this was during the period where there were rent arrears. He said that he has no other income other than that from his portfolio of properties.
22. Mr Gardner said that, although the rent arrears were reducing, it would take many years for them to be extinguished at the current rate of payment. He said that, because of the irregularity of payment from DWP, there is no certainty that the payments in excess of the rent will continue.
23. He said that it is not acceptable that Ms Leary does not communicate with him. At the previous case management discussion, Mr Gardner said that he would have been happy to discuss a payment plan with the Respondent but that she had not responded to his communications. Mr Gardner highlighted the fact that the Respondent had not responded to his requests for access.
24. Mr Gardner said that the Respondent still occupies the Property. He said that she has no children residing with her and, that, as far as he knows, occupies the Property on her own. He said that he knew nothing more about her personal situation.

Discussion and Reasons

25. The Tribunal had before it the private residential tenancy agreement and Title Sheet which evidenced that the Applicant had title and interest to apply for an order of eviction.

- 26. The Tribunal had before it the Notice to Leave with evidence of service, rent statement submitted with the application, updated rent statement and copy text messages from the Applicant to the Respondent.**
- 27. The Tribunal determined that it could dispose of the matter at the case management discussion and that there was no necessity to have a Hearing. There was no other evidence which the Applicant had to produce and the Respondent had failed to attend two case management discussions.**
- 28. The Tribunal considered the pre- action requirements and accepted that the grounds for eviction were met prior to 27th May 2021. The Notice to Leave referred to rent being in arrears for the months of October, November and December 2019 in addition to January, February, March, April, May, June and July 2020. There were considerably more than three months' rent in arrears prior to 27th May 2020 when the provisions of the Coronavirus (Scotland) (No.2) Act 2020 came into force. On balance, whilst the Tribunal considered that the Applicant could have done more to evidence that he had complied with the spirit of the pre- action requirements, it came to the view that there was no requirement for him to do so in view of the ground for eviction under the Act being met prior to 27th May 2020.**
- 29. The Respondent had not engaged with the Tribunal process and had not attended two case management discussions. The Tribunal therefore had no information from the Respondent to assist it in determining whether or not it was reasonable, as far as the Respondent was concerned, to grant the order. It accepted that the Applicant stated that she had no children residing with her and that she occupied the Property on her own.**
- 30. The Tribunal accepted that the Respondent had not engaged with the Applicant on the matter of rent arrears or access to the Property and considered it significant that she seemed to be selective in her communications with her landlord because she had facilitated the gas safety inspection.**
- 31. The Tribunal accepted that, although the level of rent arrears was reducing, it was not reasonable from the Applicant's position that, at the current level of payment, it would take five years or so for them to be extinguished. It also considered it significant that there is no certainty on**

such payments from DWP and that the reduction of the level of arrears was due to no effort on the part of the Respondent.

32. The Tribunal accepted that the existence of the arrears of rent had led to financial consequences for the Applicant. He had no source of income other than that from his rental portfolio and had been required to pay the mortgage and insurance costs from his own resources for a period of eight months. In addition, he had met a considerable capital cost for repairs during the period when there were rent arrears.

33. The matter of reasonableness is a matter of balance and the Tribunal considered, for the reasons given, that it was reasonable for an order of eviction to be granted.

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.

**Martin J. McAllister
Legal Member
4th August 2021**