



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

Chamber Ref: FTS/HPC/EV/21/0362

Re: Property at 7 Elder Drive, Glasgow, G72 7GY (“the Property”)

Parties:

Mrs Tehruna Pervez, 8 Langhaul Place, Glasgow, G53 7BY (“the Applicant”)

Ms Gillian Thomson, 7 Elder Drive, Glasgow, G72 7GY (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

The Applicant lodged an application on the 18th February 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under Ground 12 of Schedule 3 of Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were:-

1. The Tenancy Agreement showing a start date of 1st November 2019 and a monthly rent of £750
2. Notice to Leave
3. Section 11 Notice
4. 4 letters showing compliance with the Pre Action Requirements

The application was served on the Respondent by Sheriff Officer on 7th April 2021.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Deen of Apex Services. There was no appearance by the Respondent nor by any representative on her behalf.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules.

The Applicant’s Representative confirmed that he was seeking an eviction order. He said that the rent arrears now ran to £9000. He confirmed that the Respondent lived in the property with her 19 year old daughter. He confirmed that he had contacted South Lanarkshire Council and they said that the Respondent had been receiving Housing Benefit, but that following his enquiry they had cancelled her claim. He referred to emails he had received from South Lanarkshire Council dated 22nd April 2021. He also confirmed that the only contact with the Respondent, despite sending four letters regarding rent arrears, was when she telephoned the landlord on receipt of the Notice To Leave, threatening to smash up the property. There had been no engagement by her whatsoever.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement had a commencement date of 1st November 2019;
3. Four letters were sent by the Applicant’s representative to the Respondent regarding arrears before a Notice To Leave was served;
4. A Notice to Leave was served on the Respondent;
5. At the date the Notice was served the Respondent was in arrears by more than three months;
6. The arrears when the action was raised were £7500;
7. The arrears at today’s date are £9000;
8. There has been no engagement by the Respondent apart from a threat by telephone to smash up the property;
9. Housing benefit was in payment for a period but was not passed on to the Applicant.

Reasons for Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3)Schedule 3 (eviction grounds) has effect as if—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (a), the word "and" were repealed,

(iii)after paragraph (b) there were inserted ", and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (b), the word "and" were repealed,

(iii)after paragraph (c) there were inserted ", and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (b), the word "and" were repealed,

(iii)after paragraph (c) there were inserted ", and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for the word "must" there were substituted " may ",

(ii)the words from "the landlord" to "3 months" were paragraph (a),

(iii)after paragraph (a) there were inserted ", and

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

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for the word "must" there were substituted " may ",

(ii)the words from "the landlord" to "home" were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

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

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b) the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,

(ii)for paragraph (c) there were substituted—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) were repealed,

(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established a prima facie case for eviction and that the Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. Having considered that the Respondent was in arrears to the extent of £9000, that she had not engaged with the Applicant or her Representative other than to threaten to smash up the house and that she had been in receipt of Housing Benefit but not paid it to the Applicant, it was reasonable to grant the order.

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.

Alison J Kelly

Legal Member/Chair

Date: 07/05/2021