



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/0368

Re: Property at 6 Pembroke, East Kilbride, G74 3QB (“the Property”)

Parties:

Ms Joyce Russell, C/o 4 Chancellor Street, Glasgow, G11 5RQ (“the Applicant”)

Mr Robert Graham, 6 Pembroke, East Kilbride, G74 3QB (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Tony Cain (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 for recovery of possession should be granted in favour of the applicant against the respondent.

Background

1. An application was received from the landlord’s agent, Victoria Letting Ltd, on 17 February 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Copy notice to leave dated 10 July 2020, citing ground 12, and stating the date before proceedings could not be raised to be 1 February 2021, together with confirmation of service by email sent on 10 July 2020

- (ii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to South Lanarkshire Council on 17 February 2021
 - (iii) Rent statement showing the rent outstanding as at 26 January 2021 to be £4050.
3. Following a request from the tribunal administration, a copy of the Private Residential Tenancy Agreement between the parties which commenced on 26 November 2018 was received from the landlord's agent on 17 March 2021.
 4. Several copies of updated rent statements were received by the tribunal administration between 17 March and 7 April 2021. The rent statement submitted with the original application appeared to show that only two months' rent had been outstanding as at the date of service of the notice to leave. The landlord's agent explained in an email of 7 April 2021 that they had taken over management of the property from the previous letting agent on 1 February 2020 and that there had been issues with changing over their systems. In fact, the respondent had been in three months' rent arrears at the time the notice to leave was served, as shown on the updated rent statement received on 7 April 2021.
 5. The application was accepted on 21 April 2021. Notice of the case management discussion (CMD) scheduled for 3 June 2021, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 7 May 2021.
 6. The tribunal issued a direction to the parties on 12 May 2021. This invited the applicant to submit written representations setting out the reasons why she considered that it would be reasonable for the tribunal to grant an eviction order, including information on how she had complied with the pre-action requirements prior to making the application. The tribunal also invited the respondent to submit written representations setting out the reasons why he considered that it would not be reasonable for the tribunal to grant an eviction order.
 7. Written representations in response to the direction were received from the applicant's agent on 26 May 2021. No written representations were received from the respondent prior to the CMD.

The Case Management Discussion

8. A CMD was held by teleconference call on 3 June 2021. The applicant was represented by Miss Annette Hanna of Victoria Letting Ltd. The respondent was not present or represented on the teleconference call.

9. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes in case the respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent in terms of rule 29 of the 2017 rules.
10. Miss Hanna asked the tribunal to grant an order in favour of the applicant against the respondent for recovery of possession of the property. She confirmed that the respondent had made no rental payments since 3 March 2020, and that the outstanding rent arrears now totalled £6750.

Findings in Fact

11. The tribunal made the following findings in fact:
 - The applicant was the owner of the property. The land certificate showed the title was in the name of Joyce McIntyre. Miss Hanna had produced an email from the applicant dated 25 May 2021, confirming that she had remarried in 2017 and that Russell was her married name.
 - There was a private residential tenancy in place between the parties, which commenced on 26 November 2018.
 - The monthly rent payable in terms of the tenancy agreement was £450 per month, payable in advance on the 26th of each month.
 - The notice to leave was dated 10 July 2020 and was sent by email to the respondent on that date. The notice stated that an application for an eviction order would not be submitted to the tribunal before 1 February 2021.
 - The respondent owed rent arrears of £6750 as at the date of the CMD. He had been in rent arrears continuously since 26 March 2012.

Reasons for decision

12. Firstly, the tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act").
13. The relevant provisions of the 2016 Act are as follows:
 - i) Section 62 (1)(b) which states that the notice to leave must specify the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the tribunal;
 - ii) Section 62 (4) which states that the day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire;

- iii) Section 62 (4) which states that for the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent;
- iv) Section 54 (2) which states that the relevant period in relation to a notice to leave begins on the day the tenant receives the notice to leave from the landlord

14. Following the changes introduced by the 2020 Act, the relevant period in relation to a notice to leave which is served on or after 7 April 2020, where the notice relies on ground 12 of schedule 3, is 6 months.

15. As the notice to leave was sent to the respondent by email (which was the agreed method of communication under section 4 of the tenancy agreement) on 10 July 2020, it was assumed to have been received on 12 July 2020. In terms of section 54(2), the day when the notice period began was therefore 13 July 2020. The date on which the applicant could make an application for eviction to the tribunal should therefore have been 13 January 2021. The date stated on the notice, i.e. 1 February 2021 was incorrect.

16. The application was not submitted until 17 February 2021, however. As the date stated on the notice was later than the correct date, there was no prejudice to the respondent. In any case, paragraph 10 of schedule 1 to the 2020 Act provides that a notice to leave is not invalid by reason of an error, but it may not be relied upon by the landlord for the purpose of seeking an order for possession until the date on which it could have been relied on has been correctly completed. Therefore, as the applicant did not apply to the tribunal before the date which should have been given on the notice to leave, the notice to leave it is not invalid.

17. The tribunal then considered whether ground 12 had been established by the applicant.

18. Ground 12 as set out in Schedule 3 of the 2016 Act states:

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.

19. The tribunal was satisfied on the evidence before it that the requirements for ground 12 were established. It was clear from the rent statements before the tribunal that at the date of the CMD the respondent was in arrears well in excess of one month's rent, and that he had been in arrears of rent for a continuous period of three or more consecutive months.
20. The tribunal then considered whether the respondent's rent arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, in terms of ground 12 (2) (b). Miss Hanna told the tribunal that it was her understanding that the respondent had been working at the start of the tenancy, and had not been entitled to benefits at the time when Victoria Letting Ltd had taken over the management of the tenancy. She said that she had checked last year as to whether he made any active claim for universal credit, but he had not done so.
21. She told the tribunal that she thought the respondent may now be entitled to benefits, and that both the landlord's agent and the CAB had suggested that he should apply for benefits, as had his social worker. He had however taken no action to make a claim for benefit.
22. The tribunal accepted Miss Hanna's evidence. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
23. The tribunal was therefore satisfied that ground 12 applied. It was also satisfied that all or part of the rent in respect of which the respondent was in arrears related to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) Act (No. 2) Act 2020 is in force, in terms of paragraph 3A of schedule 3 of the 2016 Act.
24. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 3 (b) of schedule 3 of the 2016 Act. In doing so, it took into account all of the circumstances of the case on the basis of all of the evidence before it.
25. The tribunal noted that the respondent had accrued substantial rent arrears and had made no rental payments for 15 months. The applicant had therefore received no rental income from the property over that significant time period, which had caused her some financial difficulty. Miss Hanna told the tribunal

that the applicant had a mortgage to pay in respect of the property in addition to the mortgage on her own home. The applicant was not an investor landlord and to Miss Hanna's knowledge, this was the only property the applicant rents out.

26. The respondent was not present and had submitted no written representations. There was accordingly little information available to the tribunal about his personal circumstances, beyond that which Miss Hanna was able to provide. She told the tribunal that the respondent was elderly and that she believed he may have some health issues. He lived alone in the property and had been experiencing some difficulties. His wife had previously also lived there but was now living in a care home. Miss Hanna said that both the applicant and the applicant's agent had done what they could to assist him. She said that the applicant had waited as long as she could before serving a notice to leave on the respondent but had eventually had no choice but to do so.
27. She said that it was very difficult to communicate with the respondent. He did not respond to calls or emails, and the applicant's agent had to physically visit the property to speak to him. She said that for around a year, the respondent has been supported by a social worker, and that she had been in direct contact with the social worker. She said that a few minutes prior to the CMD, she had received an email from the social worker saying that the respondent had now moved out of the property but still had some personal belongings to remove. She believed that the social worker had found alternative accommodation for the respondent in a social housing property. She said she still wished to seek an order for eviction, however, in case this was needed.
28. As part of its consideration of whether it was reasonable to issue an eviction order against the respondent, the tribunal considered the extent to which the landlord has complied with pre-action requirements before applying for the eviction order, as required in terms of paragraph 3B of Schedule 3 of the 2016 Act.
29. The tribunal noted the terms of letters dated 5th, 15th and 29th June 2020 which the applicant's agent had produced in response to its direction. Miss Hanna said that these had been hand delivered to the respondent by the applicant's agent. She said that their payment system also sent out an invoice to the respondent by email 2 days before the rent was due. The tribunal noted that the letters included details of the level of rent arrears; the respondent's rights in relation to eviction proceedings; and where he might access information and advice on financial support, benefits and debt management. They also stated that the applicant's agent was willing to work towards agreeing a payment plan to pay the arrears. While the tribunal noted that the letters did not make reference to the existence of the pre-action requirements, it was satisfied that the applicant had otherwise complied with the

requirements as set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

30. Having carefully considered all of the evidence and all of the circumstances of the case as set out at paragraphs 25- 29 above, the tribunal considered that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the respondent under section 51 and ground 12 in Schedule 3 of the 2016 Act.

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.

Sarah O'Neill

6 June 2021

Legal Member/Chair

Date