



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/21/1217

Re: Property at Flat 2-2, 10 Meadowbank St, Dumbarton, G82 1SD (“the Property”)

Parties:

Mrs Rajvinder Kaur, 7 Birnock Avenue, RENFREW, PA4 0YW (“the Applicant”)

Mr James Duncan, Flat 2-2, 10 Meadowbank St, Dumbarton, G82 1SD (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application seeking an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, is refused.

- Background
 1. An application dated 20 May 2021 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 12 August 2021 by tele-conference. The Applicant was represented by her letting agent, Mr Nixon of Ritehome. The Respondent was represented by Ms Souter of Shelter Housing Law Service.
 3. The Applicant’s representative moved for the Order for Repossession to be granted. A Notice to Leave had been served on the Respondent on the basis of Ground 12 under Schedule 3 to the said 2016 Act by Sheriff Officer. The Applicant had tried to engage with the Respondent regarding the rent arrears accrued since March 2020, but the Respondent had not engaged with her. The Respondent was still resident in the Property and the arrears continued to accrue.
 4. The Respondent’s representative submitted that it was not reasonable that the order be granted. The Respondent firstly submitted that the Applicant had not complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Letters had been lodged which were dated on or after the raising of the application, and accordingly had not been issued before raising proceedings. Further, it was not reasonable to evict the Respondent under the circumstances. The Respondent had tried to access housing costs payments under Universal Credit but this had been refused due to him not having been provided with a written tenancy agreement from the Applicant. The Respondent had made two attempts to apply for housing costs and sought assistance from his DWP work coach and also from an advisor within the local authority. On both occasions his applications were refused. The Respondent’s representative has contacted the Child Poverty Action Group who advise that it may be possible for the Respondent to apply for a mandatory reconsideration of the DWP’s refusal and could also seek a backdated payment of arrears which could pay off a significant amount of the sums due if successful.
 5. The CMD was adjourned to a Hearing to take place at 10am on 28 September 2021 to consider:
 - (i) Whether or not the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 (“the 2020 Regulations”) have been complied with; and
 - (ii) Whether or not it is reasonable to grant an order for repossession.
 6. A Hearing took place on 28 September 2021 by tele-conference. The Applicant was present and again represented by her letting agent, Mr Nixon of Ritehome. The Respondent was present and again represented by Ms Souter of Shelter Housing Law Service. Also present on the call was Mr Singh, the Applicant’s brother, who spoke on her behalf due to the Applicant’s language difficulties.
 7. The following documents were lodged by the Applicant alongside the application:
 - (i) Copy Notice to Leave

- (ii) Proof of service of the Notice to Leave
- (iii) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (iv) Rent statement
- (v) Letter from Ritehome to Respondent dated 20 May 2021

8. The following documents were lodged by the Applicant prior to the Hearing:

- (i) Rent statement from 4 November 2018 to 30 December 2018
- (ii) Signed agreement between the Respondent and "Jag Singh" dated 22 June 2020
- (iii) Letter from Macpherson Maguire Cook solicitors to Respondent dated 3 July 2021 enclosing proposed Minute of Agreement

9. The following documents were lodged by the Respondent prior to the Hearing:

- (i) Copy title sheet for the Property
- (ii) Details from the Scottish Landlord Register
- (iii) Email from West Dunbartonshire Council dated 6 September 2021
- (iv) Email from West Dunbartonshire Council dated 14 September 2021
- (v) Emails between West Dunbartonshire Council and DWP dated 6 September 2021 and 23 September 2021

- Findings in Fact

10. The Tribunal made the following findings in fact:

- (i) The parties entered into a verbal Private Residential Tenancy Agreement ("the Agreement") which commenced on or around November 2018;
- (ii) In terms of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £90 per week;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 2 October 2020;
- (iv) The Respondent is in arrears of rent.
- (v) The Applicant has failed to provide the Respondent with a written tenancy agreement.
- (vi) The DWP will not grant an application for payment of housing costs to the Respondent without sight of a written tenancy agreement.

- Reasons for Decision

11. Section 51 of the 2016 Act states as follows:

51 (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.*

12. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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.

13. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the Hearing and further that the arrears of rent are an amount which is greater than the amount due to be paid as one month's rent. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. However, the Tribunal was also satisfied that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal was not satisfied that it was reasonable to grant the order for repossession under the circumstances.

- Applicant's submissions

14. The Applicant submitted that the Respondent had been in arrears of rent since 22 March 2020. A Notice to Leave had been issued and the Respondent had failed to remove from the Property. It was accepted that no letters were issued in compliance with the 2020 Regulations prior to raising the proceedings. However, a letter had been issued to the Respondent on the same date as the proceedings were raised in an effort to expedite matters. The Respondent had

failed to engage with the Applicant. The rent arrears were currently £6,296.76. The Applicant had managed the tenancy herself and Ritehome were only engaged by her to raise the Tribunal proceedings and represent her in same.

15. A Minute of Agreement of 3 July 2020 had been sent to the Respondent from the Applicant's solicitors and the terms of same provided that a written tenancy agreement would be provided within 8 weeks of signature of the Minute of Agreement. Said Minute of Agreement set out terms for repayment of rent arrears accrued. The Applicant was not refusing to issue a written tenancy agreement but wanted assurances that the arrears accrued to date would be repaid. She had no faith that the Respondent would adhere to the terms of any written agreement going forward. The Applicant had not initially intended to enter into a tenancy with the Respondent but simply a temporary informal arrangement, pending the Respondent finding more suitable accommodation elsewhere. The Respondent had refused to pay rent. There had been no communication sent to the Applicant from either the Respondent or anyone acting on his behalf regarding any requests for a written tenancy agreement nor highlighting any difficulties with his application for payment of housing costs from the DWP.

16. It was submitted that the Applicant had sought advice from his family solicitor with a view to having a tenancy agreement drafted. However, the solicitor was about to retire and was in the process of handing over to a new solicitor and this had not been able to be progressed prior to lockdown.

17. The Police became involved due to the Respondent's difficult behaviour and they assisted in having the Respondent sign a short agreement with the Applicant's brother as her representative in which the Respondent agreed to pay £200 from his furlough payments and failing which he agreed to leave the property.

- Respondent's submissions

18. It was submitted that it was not reasonable to evict the Respondent. The Respondent had been employed at a restaurant owned by the Applicant's family. He was furloughed at the start of the pandemic and in May 2020 lost his job. He had no arrears of rent prior to this. His rent had been paid via deductions from his salary. After losing his job in the family business, he applied for Universal Credit and was awarded same. His application for housing costs was rejected due to lack of a written tenancy agreement. The Application has failed to provide a written tenancy agreement despite having a duty to do so under section 10 of the 2016 Act. This has left the Respondent in a situation whereby he is entitled to payment of housing costs from the DWP as part of his Universal Credit entitlement, but cannot have these paid without presenting a written

tenancy agreement to the DWP. An mail from the DWP to West Dunbartonshire Council of 23 September 2021 was referred to and which confirmed that the documentation lodged was not sufficient to enable payment of the housing costs. It was not reasonable that the Applicant would make the issuing of a written tenancy agreement conditional upon the Respondent signing the proposed Minute of Agreement relating to repayment of arrears. The Respondent had taken advice from the local authority homeless team and had been advised not to sign the minute of agreement. The Respondent has been taking advice from the local authority since April 2020 to try and resolve matters.

19. The application is raised on the basis of Ground 12 of the 2016 Act, which is a fault-based ground in that the tenant has accrued rent arrears. If the order for repossession is granted it will place the Respondent in a housing emergency. Whilst the local authority has statutory duties to provide temporary accommodation, the Respondent's right to long-term housing would be compromised with an eviction order granted against him on the basis of rent arrears.
 20. It was also submitted that the validity of signing the document in front of the Police and the Applicant's brother was questionable. The Respondent had been placed in a situation of considerable pressure with the Police being present, and it was not clear on what basis the Police officer concerned was qualified to give money advice or in any way assess the affordability or otherwise of what was proposed. Further, said agreement was signed by the Applicant's brother who is not a party to the tenancy agreement nor this application. It was submitted that there was no validity to the document.
 21. The Respondent has served formal notice to the Applicant on 30 August 2021 that he intends to raise proceedings with the Tribunal in relation to the Applicant's failure to provide a written tenancy agreement. This has still not been responded to, nor a tenancy agreement issued. The Respondent questioned the Applicant's statement that they were unable to provide a written tenancy agreement due to their solicitor retiring and lockdown happening. It was submitted that the Scottish Government's style PRT was readily available online, could be signed electronically and therefore a solicitor was not needed for the drafting of such an agreement, nor was lockdown a barrier to having the agreement signed electronically, with no face to face contact needed.
- Reason for Decision
22. It was clear to the Tribunal that the Applicant had very little knowledge of the law relating to private sector tenancies at the time the agreement with the Respondent was entered into. This was most unfortunate. Written agreement or not, a Private Residential Tenancy in terms of section 1 of the 2016 Act had

been created between the parties by virtue of the Respondent occupying the Property as his principal home, and there being payment of rent.

23. The Tribunal was not persuaded that the Applicant did not give the Respondent a written tenancy agreement due to their family solicitor retiring and the lockdown thereafter. Solicitors were operating remotely during lockdown and advice could have been sought from another firm if need be, and via telephone or email. Further, there is an abundance of information and guidance freely available online as regards Private Residential Tenancies, in particular on the Scottish Government website, and information on how to set up an agreement and sign same remotely. It seemed evident that the Applicant simply did not want to enter into a written tenancy agreement with the Respondent, perhaps on some ill-founded understanding that this may make her ability to remove the tenant from the Property easier.
24. In terms of section 10 of the 2016 Act, the Applicant had a legal duty to provide a written tenancy agreement to the Respondent and failed to do so. Whether or not the Respondent (or his representative) has ever expressly asked for one to be provided (which was in dispute) is irrelevant. The tribunal was satisfied by the evidence before it that the Respondent, who was in receipt of Universal Credit, was entitled to payment of housing costs and was not able to have those paid as the DWP required a written tenancy agreement in order to do so. The Applicant's failure to provide a written tenancy agreement has directly resulted in the Respondent's inability to claim payment of housing costs, of which he is entitled. It would not be reasonable to grant an order for eviction on the basis of rent arrears, when at least part if not all of those arrears could have been avoided had the Applicant fulfilled their duty to provide a written tenancy agreement in terms of section 10 of the 2016 Act. The Applicant gave no satisfactory reason as to the failure to provide a written tenancy agreement. The Tribunal did not consider it reasonable for the Applicant to only offer to issue a written tenancy agreement conditionally upon the Respondent signing a Minute of Agreement regarding payment of rent arrears. The tribunal noted that the Respondent did not sign same after taking advice from the local authority's homeless team. The tribunal did not consider that the Respondent acted inappropriately under the circumstances. He followed the advice given to him at the time. Provision of a written tenancy is a statutory duty and is not conditional upon the actions or agreement of the Respondent on any other matters relating to the tenancy.
25. For the avoidance of doubt it should also be noted that the Tribunal was not satisfied that the 2020 Regulations had been met. By the Applicant's own admission, no letters had been sent to the Respondent prior to raising the proceedings with the Tribunal which met the Pre-Action requirements. Sending a letter to the Respondent at the same time as raising the proceedings was

quite clearly not a “pre-action” letter and gave no notice to the Respondent of the action which would be raised should their obligations for rental payments not be met.

- Decision

26. The Tribunal refused the application by the Applicant for an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Legal Member: Fiona Watson

Date: 28 September 2021

F. W