



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/21/1244

Re: Property at 8 Cairncross Place, Coatbridge, ML5 2FA (“the Property”)

Parties:

Mr Alex Neil and Mrs Kristine Neil, Fell End Lower Lane, Longridge, PR3 3SL (“the Applicants”)

Mr Craig John Horner and Ms Emma Louise Thompson, 8 Cairncross Place, Coatbridge, ML5 2FA (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 8 Cairncross Place, Coatbridge, ML5 2FA under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 21 May 2021, the Applicants’ agent applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement dated 28 June 2019 between the parties, a Notice to Leave dated 28 October 2020, various items of correspondence to the Respondents from the Applicant's agent, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 24 May 2021.
3. On 11 August 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 23 August 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 23 September 2021. The Respondents required to lodge written submissions by 13 September 2021. This paperwork was served on the Respondents by Iain Wylie, Sheriff Officer, Glasgow on 25 August 2021 and the Execution of Service was received by the Tribunal administration.
5. On 23 August 2021 the Applicants' agent emailed the Tribunal administration to request the CMD be postponed for personal reasons. That request was granted by the Tribunal. A further CMD was assigned to proceed on 12 October 2021. The Tribunal advised both parties of the new date.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 12 October 2021 by way of teleconference. The Applicants were represented by Mrs Franchitti-Murray from Property Angels Letting and Management Ltd. Ms Thompson appeared and explained that Mr Horner had been delayed at work, but confirmed she had authority to represent him too.
7. The CMD also considered an application for payment under case reference FTS/ HPC/CV/21/1245 in terms of which the Applicants sought payment of rent arrears from the Respondents.
8. The Tribunal had before it the Private Residential Tenancy Agreement dated 28 June 2019 between the parties which commenced on 28 June 2019, a rent statement showing arrears of £5850 and letters dated 14 August 2020, 11 September 2020 and an undated letter, a copy of the Notice to Leave dated 28 October 2020 with an email addressed to the Respondents dated 29 October 2020 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 24 May 2021.
9. Mrs Franchitti –Murray moved the Tribunal to grant the order for repossession. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the Respondent had agreed to pay a monthly rent of £1300 per month. As of 28 October 2020 Mrs Franchitti – Murray advised the rent

arrears were £2150. With reference to the rent statement Ms Franchitti-Murray advised that at that stage the Respondents had been in arrears for over 3 consecutive months. She referred to the letters lodged of 11 August and 14 September 2020 and an undated letter asking the Respondents to enter into a repayment arrangement. She had taken advice from the Scottish Association of Landlords. She explained that she had a very amicable relationship with Ms Thompson with whom she was in regular contact by text and telephone calls. The current arrears had increased to £7550 from the date of the application when they were £5850. The Respondents paid what they could when they could. She explained that she and her clients were sympathetic to the Respondents' predicament, but they wanted to bring this matter to a conclusion. She explained the Applicants would be willing to reach some sort of payment programme with the Respondents. She advised they had made a recent payment but that payments were sporadic and did not always cover the monthly rent of £1300.

10. Ms Thompson accepted the level of the arrears was £7550. When they moved into the Property in 2019 they had sold their home and since then had been looking to buy somewhere else for the family to live. Unfortunately the pandemic then hit. They have been actively seeking to move to another property either to rent or to buy and had viewed as many as they have been able. She explained that she and Mr Horner had three children aged 18, 13 and 6. Her eldest 18 year old son still lived with them and was due to start an apprenticeship. Her other two children attended the local high school and primary school.
11. The Tribunal questioned Ms Thompson about the affordability of living in the Property. She explained they had had to remain in the Property longer than they had first anticipated, not helped by the property market or the pandemic. Neither Respondent was put on furlough during the pandemic, but their income had reduced. They had not been entitled to benefits. Ms Thompson had taken a new job which allowed her to work from home so she could also look after the children particularly when they were not at school. Mr Horne's income had not changed. She also explained that they had approached the local authority and 3 or 4 housing associations for rehousing. Unfortunately they did not have suitable properties for the family. She confirmed that they had received the Notice to Leave by letter.
12. With regards to the Notice to Leave Mrs Franchitti- Murray confirmed it had been sent by email and by post. The Tribunal noted that under clause 4 of the tenancy agreement communication to the Respondents was to be by hard copy or by Recorded Delivery.
13. In her closing submission, Ms Franchitti-Murray stated it was reasonable in all the circumstances for the Tribunal to make an Order to evict. The arrears continued to increase. Initially the Applicants had hoped they would be able to work with the Respondents to reduce the arrears when the arrears were at a

far lower level. However the arrears had reached a level where there was no going back. The only way to stop the arrears increasing further which was not in the interest of either the Applicants or the Respondents, was to end the tenancy. She submitted the Respondents simply could not afford to live in the Property and that was not going to change.

14. With regards to reasonableness Ms Thompson added to her earlier submissions and stated that they had done everything they could to secure alternative accommodation. Their financial situation would not change. They wanted to get to the point where they could set up a payment plan and move on. They did not want to be in the position they were in. When questioned by the Tribunal about rehousing options with the local authority, she confirmed she had not discussed temporary accommodation with the local authority, The Tribunal pointed out that Mrs Franchitti – Murray had served a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 24 May 2021. Ms Thompson was not aware of that as the local authority had not mentioned that.

Findings in Fact

15. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 28 June 2019 in relation to the Property that the Respondents would pay the Applicants a monthly rent of £1300.
16. The Respondents have fallen into arrears of rent. The arrears were £5850 at the date of the application. Arrears have increased to £7750 as at 12 October 2021.
17. On 28 October 2020, the Applicant's agent sent a copy of the Notice to Leave to the Respondents requesting that they remove from the Property by 1 May 2021. Clause 4 of a Private Residential Tenancy Agreement provides that the Notice can be served by hard copy or recorded delivery. The Respondents received a hard copy of the Notice.
18. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. At the time of serving the Notice to Leave the Respondents had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy, the arrears being £2150.
19. The Applicant's agent had sent letters on 11 August 2020 and 14 September 2020 and another undated letter to the Respondents about the arrears after

taking advice from the Scottish Association of Landlords. The Respondents have actively engaged with the Applicants' agent in relation to the arrears.

20. There are no outstanding benefits issues. The Respondents are both in employment. The Respondents pay what they can towards the rent when they can, but are not always able to meet the full monthly rent of £1300.
21. The Respondents reside in the Property with their three children aged 18, 13 and 6. Their eldest 18 year old son is due to start an apprenticeship soon. The other two children attend the local high school and the local primary school.
22. The Respondents have been actively looking for alternative accommodation to buy or rent. The local authority and local housing associations have no suitable permanent properties. The local authority has not discussed temporary accommodation with the Respondents.
23. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on North Lanarkshire Council on 24 May 2021.

Relevant Legislation

24. The Tribunal considered the following legislation in its determination -
 - Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020

Section 51 (1) of the 2016 Act provides 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.

Section 51 (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may 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.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (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.

Section 52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3), or (b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave— (a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

- (i) 28 days after it begins if subsection (3B) applies,
 - (ii) three months after it begins if subsection (3C) applies,
 - (iii) six months after it begins if neither subsection (3B) nor (3C) applies
- (3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]
- (3A) This subsection applies if—
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the landlord intends to live in the let property, [ground 4]
 - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]
 - (iii) that the tenant has a relevant conviction, [ground 13]
 - (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]
 - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]
 - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]
 - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or
 - (b) the only eviction grounds stated in the notice to leave are—
 - (i) the eviction ground mentioned in subsection (3), and
 - (ii) an eviction ground, or grounds, mentioned in paragraph (a)
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]
 - (b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies 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 First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) 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.

(5) 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.

Ground 12 in Schedule 3 of the Act

Rent arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) [Temporarily repealed by the 2020 Act]

(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.

(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.

(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.

(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.

The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

Paragraph 4 relates to the pre-action requirements for private residential tenancies -

4.—(1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.

(2) The provision by the landlord to the tenant of clear information relating to—

- (a) the terms of the tenancy agreement,
 - (b) the amount of rent for which the tenant is in arrears,
 - (c) the tenant's rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and
 - (d) how the tenant may access information and advice on financial support and debt management.
- (3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of—
- (a) future payments of rent, and
 - (b) the rent for which the tenant is in arrears.
- (4) The reasonable consideration by the landlord of—
- (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,
 - (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and
 - (c) any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).

Reasons for Decision

25. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by both Mrs Franchitti – Murray and Ms Thompson. The Applicant produced evidence of sporadic payment of rent which did not at times meet the amount of the monthly rent. Arrears had increased to £7550. This was accepted by Ms Thompson.
26. The Respondents were clearly in a very difficult position; they wanted to move home and were actively seeking somewhere to buy or rent but had been unable to secure alternative accommodation. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mrs Franchitti- Murray and Ms Thompson that the facts were not in dispute and that there was no need to proceed to a full hearing for evidence to be led. In particular it is not disputed that the Respondents were in rent arrears and had

been in arrears of more than 3 months at a level of arrears of more than the equivalent of one month when the Notice to Leave was given on 18 October 2020 and at the time the Tribunal considered the application. The amount of arrears of £7550 was also not disputed.

27. The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 3 and 4. The Notice to Leave was given on 28 October 2020 and thus the notice period stated in Section 54 (2) (b) (iii) of 6 months applies as further defined in Section 64 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave met these requirements.
28. The application to the Tribunal was made after 6 October 2020 and accordingly the provision of Ground 12 (3B) of schedule 3 of the 2016 Act applies with regard to the compliance with the pre-action requirements introduced by The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and specifically Regulation 4 in relation to private residential tenancies. The Tribunal was satisfied that the letters gave the Respondents an opportunity to enter into a repayment plan with clear information as to the amount of arrears and signposting to advice agencies. The Tribunal appreciated this was understood by the Respondents who had done their very best to meet the rent and pay what they could towards the rent as and when they could. Communication was clearly very good between the parties and the Respondents had taken a responsible approach with the Applicants' agent and had actively engaged with them to pay the rent. Unfortunately despite this the arrears continued to increase. The Tribunal were satisfied the Applicant had complied with the pre action requirements.
29. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicants had worked with the Respondents to manage the arrears but had reached the point that arrears were clearly just going to increase which was not of any benefit to either party. The Tribunal agreed with the Applicants that it appeared the Respondents could simply not afford to live in the Property. The Respondents were both in employment and had taken sensible steps with North Lanarkshire Council in relation to rehousing. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal considered that the balance was finely tipped in favour of the Applicants. They were entitled to recover the Property. The Tribunal find it would be reasonable to grant the order.

30. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

31. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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: Shirley Evans

Dated: 12th October 2021