



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/21/1558

Re: Property at 86 Rosebank Terrace, Glasgow, G69 7SG (“the Property”)

Parties:

Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL (“the Applicant”)

Mr Chris Harkins, 86 Rosebank Terrace, Glasgow, G69 7SG (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 28th June 2021 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with its application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, rent arrears statement, various pre-action correspondence, and a letter from solicitors confirming that they were instructed in the sale of the Property.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the

procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th August 2021, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held at 10.00 on 15th September 2021 by Tele-Conference. The Applicant's directors, Mr Rok Lasan and Mr Graeme Murray participated, and were not represented. The Respondent participated, and was not represented.

The Tribunal discussed with the parties the issue that the application had been made to the Tribunal in circumstances where the relevant period of notice specified in the notice to leave had not yet expired, and the Applicant's submissions concerning whether it was reasonable for the Tribunal to entertain the application in terms of section 52(4) of the *Private Housing (Tenancies) (Scotland) Act 2016*.

Thereafter, the Tribunal continued the application to a further Case Management Discussion to allow the Applicant to make more detailed submissions on that point.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 25th October 2021 by Tele-Conference. The Applicant's directors, Mr Rok Lasan and Mr Graeme Murray again participated, and were not represented. The Respondent again participated, and was not represented.

After further discussion between the parties and the Tribunal, the Respondent, though dissatisfied with various aspects of his treatment by the Applicant in relation to the tenancy, confirmed that he intended to leave the Property by the end of November 2021. His main concern was that any order made by the Tribunal would not result in his being removed before then against his wishes.

The Tribunal explained to parties that any order it made could not be enforced until the period for seeking permission to appeal had expired. Having done so, the Respondent confirmed that he did not oppose the granting of the order which the Applicant sought.

The Respondent explained that he had fallen into arrears of rent due to a period of unemployment caused by the covid pandemic. He was about to resume employment, and was ready and willing to enter into a repayment plan with the aim of repaying the rent arrears to the Applicant by the end of February 2022.

The Tribunal was invited by the Applicant with reference to the application and papers to grant the order sought on grounds 1 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Applicant submitted that it was reasonable for the Tribunal to entertain the application in terms of section 52(4) of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 27th April 2021 relied on grounds 1 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that rent had not been paid for the three months up to the date of the notice to leave, and that the Applicant required to sell the Property to generate funds.

Rental of £575.00 per month was payable in advance in terms of the private residential tenancy agreement. The Respondent had been in arrears of rent for three months as at the date of the notice to leave, and he had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

In terms of Section 54 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) a landlord may not make an application to the 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. The relevant period of notice in this application did not expire until 27th October 2021, and accordingly this application is made in breach of section 54 of the Act.

However, in terms of section 52(4) of the Act, the Tribunal may entertain an application made in breach of section 54 of the Act if the Tribunal considers it reasonable to do so. In the circumstances explained by the parties, and standing the lack of objection by the Respondent to the Tribunal entertaining this application, the Tribunal considered it reasonable to do so.

In terms of Section 51 of the Act as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding 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.

The Tribunal was satisfied that ground 12 had been established. The Respondent admitted that he was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was further satisfied by the submissions of the Applicant and by the letter from solicitors confirming that they were instructed in the sale of the Property that the landlord intended to sell the Property and that ground 1 had been established.

The Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent were substantial, and the Respondent did not oppose the granting of the order sought.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.



Neil Kinnear
Legal Member/Chair

25th October 2021
Date