



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/21/1817

Re: Property at 49 Ann Street, Hamilton, ML3 0NE (“the Property”)

Parties:

Janice Murphy, 3 Chateau Grove, Hamilton, ML3 7DS (“the Applicant”)

Vicky Ann McPolland, 49 Ann Street, Hamilton, ML3 0NE (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted 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 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application dated 28 July 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 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 15 October 2021 by tele-conference. The Applicant was represented by Mr McDonald of John Y Robertson, solicitors. The Respondent did not attend nor was she represented. The papers had been served on the Respondent by Sheriff Officer on 14 September 2021. The Tribunal was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in her absence.
3. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 16 August 2019. The monthly rent was £450. The Respondent had made no payments of rent since the commencement of the tenancy. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 20 January 2021. The Respondent had been in continuous arrears for at least 3 months and the arrears at the date of the CMD stood at £12,600.
4. The Applicant’s representative submitted that the Pre-Action Requirements (“PARs”) had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Letters of 19 January 2021, 26 January 2021 and 3 June 2021 had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
5. The Applicant’s representative knew little about the Respondent’s circumstances but she was believed to reside alone and with no dependents in the household. She has failed to engage with correspondence.
6. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement
 - (vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

- Findings in Fact

7. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 16 August 2019;
 - (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £450 per calendar month payable in advance;

- (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 20 January 2021;
- (iv) The Respondent has been in continuous arrears of rent since August 2019;
- (v) The Respondent is in arrears of rent amounting to £12,600 at the date of the CMD;

- Reasons for Decision

8. 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.

9. 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.

10. 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. 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 CMD 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 there was no information before it to suggest 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.

11. Schedule 1 of the Coronavirus (Scotland) Act 2020 which is in force at the time of determining this application, sets out at section 1 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)...(i) (in paragraph 12 (rent arrears), sub-paragraph (2) were repealed.

12. The Tribunal is accordingly required to determine the reasonableness of the Order being sought, regardless of the level of arrears.

13. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since the commencement of the tenancy. She had paid nothing whatsoever. No explanation had been given by her as to the reason for falling into arrears. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

14. The Tribunal granted 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: 15 October 2021