



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 Act”)

Chamber Ref: FTS/HPC/EV/21/2194

Re: Property at 51 Langton Avenue, East Calder, EH53 0DW (“the Property”)

Parties:

Mr Gary Brown, 38 Woodhead Drive, Bothwell, Glasgow, G71 8AF (“the Applicant”)

Ms Heather McLean, 51 Langton Avenue, East Calder, EH53 0DW (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for possession be GRANTED under s51 of the Act.

1. BACKGROUND

This is an application to bring to an end a Private Residential Tenancy between the parties commencing 1 October 2018 with an “Unconfirmed” expiry date, in view of rent arrears which the Applicant states have accrued in the sum of £8950, up to 30 November 2021, which ground was confirmed and clarified at today’s Case Management Discussion (“CMD”). Said arrears included non-payment of rent for a period in excess of 3 consecutive months in that no payment of rent appears to have been made during the whole of 2021. The actual agreement was headed “Tenancy Agreement” and reference was made therein to it being a Short Assured Tenancy, as opposed to a Private Residential Tenancy under the Act, but it contained the “four cardinal elements” of a lease, namely parties, subjects, rent and duration (albeit “Unconfirmed”), was signed by the parties, commenced after the Act came into force and, furthermore, complied with the definition of “Private Residential Tenancy” as set

out in s1 of the Act. In addition, the Respondent had taken up occupancy based on it. Accordingly, the Tribunal considered it and the parties' actions consistent with it reflected the intentions of the parties as to establishing a Private Residential Tenancy.

An associated case, under Tribunal reference CV/21/2195 in respect of the unpaid rent was considered together with this application.

Following upon sundry procedure, a CMD was fixed for 23 December 2021.

At all times the Tribunal was aware that in relation to the eviction case, it required to be satisfied not only that the formal requirements in relation to same had been complied with but also that it was reasonable to make the order for repossession.

Prior to the CMD, preliminary consideration of the supporting documentation for this application confirmed that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003 on 30 September 2021.

From that preliminary consideration also, the Tribunal noted that Notice to Leave ("NTL") appeared to have been served on 30 April 2021, based on the Applicant's daughter seeking to live in the Property (Ground 5 of Schedule 3 of the Act, erroneously referred to as "Ground 8 of Schedule 5 of the Housing (Scotland) Act" in the original application, clarified in subsequent correspondence between the Tribunal and the Applicant's agents (Jones Whyte, Solicitors, Glasgow ("the Agents") and corrected in an amended application, submitted by the Agents on 13 October 2021) and that the original application, based on this ground, was lodged on or about 2 September 2021. Accordingly, the Respondent had been afforded the requisite 3 month notice period required for a Ground 5 application, leading to acceptance of the application by the Tribunal by letter of 8 November 2021.

By email of 18 November 2021, the Applicant sought to amend the ground upon which this application was based to Ground 12 (Rent Arrears), but the Tribunal required to be satisfied as to (actual and date of) service of a Ground 12 NTL regarding this ground. By email of 21 December, the Agents confirmed service of a Ground 12 NTL also on 30 April 2021 and, apparently, sent under the same Royal Mail delivery reference number (NL616298314GB) as the Ground 5 NTL previously referred to, indicating that no application to the Tribunal based on it would proceed before 1 August 2021, ie well within the prescribed 6 month notice period for a Ground 12 application. The Tribunal accordingly required to be satisfied it was competent to proceed upon the amended ground and it was against this procedural history that the CMD duly took place on 23 December 2021. It was just a matter of timing that the CMD had already been fixed, based on the original Ground 5 NTL, prior to the application to amend to a Ground 12 basis, necessitating the Tribunal requiring to consider same at the CMD, as opposed to it being perhaps clarified prior to then.

For the sake of completeness, the Applicant founded on the level of arrears which had accrued, maintained Ground 12 was therefore established and, accordingly, it was reasonable for the Tribunal to grant the eviction order sought, given said arrears.

2. CASE MANAGEMENT DISCUSSION

A CMD took place by teleconference on 23 December 2021, when the Applicant was represented by his Solicitors, Claudia Hoey and Emily Campbell, from the Agents. The Respondent was neither present nor represented.

Confirmation was available to the Tribunal of sheriff officer intimation of today's CMD on the Respondent by letter box and first class mail delivery on 24 November 2021. Accordingly, notwithstanding the Respondent's absence, the Tribunal considered the CMD could proceed. Clearly, however, since the Respondent was not present nor represented, no facts relating to her ability to ensure payment of the rent or background in which the rent fell into arrears were capable of agreement.

Since the question of the unpaid rent was at the heart of and formed the basis for both cases, the Tribunal initially considered the amount of and reason behind any arrears of rent accruing, after a period of a couple of years without any apparent issue. It was satisfied that arrears of £8950 had accrued per up to date rent statement to 30 November 2021 and that accordingly, if competent, a Ground 12 case was made out.

The Agents confirmed and advised that letters had been sent to the Respondent on 2 and 24 June 2021 providing her with advice and information about outstanding matters and possible routes to resolution, which letters were produced at the CMD and which the Tribunal regarded, after consideration, sufficiently satisfied and fulfilled pre-action requirements. The Agents confirmed that there had been no acknowledgement of these letters by the Respondent and that there had been no further contact since then.

Upon enquiry being made by the Tribunal, the Agents advised that both NTLs had been sent together on 30 April 2021, hence the same Royal Mail reference number. Initially, the Applicant had sought to proceed on Ground 5, since that afforded him earlier access to his remedy of eviction, ie after a 3 month notice period, as opposed to a 6 month notice period necessary for a Ground 12 case. However, circumstances had changed such that the Ground 5 case was no longer being insisted upon, hence the amendment to a Ground 12 case.

The Tribunal sought to be addressed by the Agents on the provisions of s52 of the Act, which states, insofar as relevant to this matter :--

“52. Applications for eviction orders and consideration of them

(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.”,

as well as s 54 of the Act, which states

“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) expires on the day falling—
 - (i) 28 days after it begins if subsection (3) applies,
 - (ii) 84 days after it begins if subsection (3) does not apply.
- (3) This subsection applies if—
 - (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or
 - (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the tenant is not occupying the let property as the tenant's home,
 - (ii) that the tenant has failed to comply with an obligation under the tenancy,
 - (iii) that the tenant has been in rent arrears for three or more consecutive months,
 - (iv) that the tenant has a relevant conviction,
 - (v) that the tenant has engaged in relevant anti-social behaviour,
 - (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.
- (4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).”

and Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020, which states:--

- “10(1) Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—
 - (a) the notice is not invalid by reason of that error, but
 - (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.
- (2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.
- (3) This paragraph applies to—
 - (a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,
 - (b) a notice served on a tenant under section 14(2)(a) or 36(2)(a) of the Housing (Scotland) Act 2001,

(c) a notice served on a tenant under section 19 or 33(1)(d) of the Housing (Scotland) Act 1988,
(d) a notice served on a tenant in accordance with section 112(1) of the Rent (Scotland) Act 1984,
while this paragraph is in force.”

In short, the Agents asked for the Tribunal to continue to entertain the application, notwithstanding the incorrect notice specified in the Ground 12 NTL, on the basis of s52(4) and also Paragraph 10, since the amendment to the application had occurred no earlier than their request to amend the application on 18 November, as previously referred to, which date was more than 6 months after the Ground 12 NTL of 30 April. In these circumstances, the Tribunal considered it just and reasonable to continue to entertain the application, as it was requested to do so in accordance with said s52(4).

In the associated case previously referred to, the Tribunal had decided the rent arrears claimed in the sum of £8950 were properly due, which amounted to a sum in excess of 3 or more months rent due.

In the circumstances of such a substantial amount of arrears having accrued, the Agents asked the Tribunal to find Ground 12 established and accordingly to consider it reasonable make the order for eviction sought. In response to enquiries from the Tribunal, the Agents said it was their understanding the Respondent was the sole resident of the property and had no dependents. Obviously, in view of the Respondent’s failure to attend, there was no challenge to any of what was stated on behalf of the Applicant nor verification of the personal circumstances of the Respondent.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 30 November 2021 in the sum of £8950 arising out of a Private Residential Tenancy between the parties commencing 1 October 2018, in respect of which the Respondent agreed to pay rent of £600 per month. Said arrears included non-payment of rent for a period in excess of 3 consecutive months in that no payment of rent appears to have been made during the whole of 2021.

4. REASONS FOR DECISION

Having found that the Respondent was due and liable for arrears of rent in the sum of £8950, the Tribunal was of the view that Ground 12 founded upon by the Applicant in this application, had been established. Furthermore, that in view of said level of arrears which had accrued, it was just and reasonable to grant the order for possession now sought.

5. DECISION

To make the order for possession sought by the Applicant.

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.



SR QUITHER

Legal Member/Chair

23 DECEMBER 2021

Date