



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/21/2360

Re: Property at 157 Clement Rise, Livingston, West Lothian, EH54 6LP (“the Property”)

Parties:

Barbara Thomson, Henry Thomson, 6 Old Well Lane, Bathgate, EH48 2XS (“the Applicants”)

Mr Tomas Kochanskis, Miss Kristina Jagminaite, 157 Clement Rise, Livingston, West Lothian, EH54 6LP (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicants to the Respondents commencing on 17 June 2019.
2. The application was dated 29 September 2021 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 19 February 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondents by email on that date in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016

Act, being that “the tenant has been in rent arrears for three or more consecutive months”. The body of the notice referred to an appended rent statement. That rent statement set out that no payments had been received for the rent due from 17 October 2020 and the following four months, totalling £3,750. The rent due under the PRT is £750 per month due in advance on the 17th of each month. The Notice intimated that an application to the Tribunal would not be made before 22 August 2021.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon West Lothian Council on 30 September 2021 was provided with the application. Evidence of the Applicants’ letting agent providing pre-action protocol information to the Respondents by emailed letter on 12 January February 2021 was further provided in the application papers.

The Hearing

5. On 9 December 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicants’ solicitor, Euphemia Matheson of Ballantyne Kirkwood France.
6. There was no appearance for the Respondents. We were informed that the Applicants could identify no contact from or behalf either Respondent since 30 March 2021 (and no contact from either Respondent from before that date). The second Respondent’s contact with the Applicant’s letting agents on 13 January 2021 was that he left the Property in August 2020. His further contact on 3 February 2021 was that he left in October 2020. No alternative contact address was provided by him, however, and none of his contact requested a change of the Tenancy Agreement. (We make further reference to the content of the Respondents’ communications below.) We considered the evidence of intimation of the CMD, where a Sheriff Officer certified that he had satisfied himself of service on both Respondents at the Property. Having not commenced the CMD until 10:10, we were satisfied to consider the application in the Respondents’ absence.
7. The Applicant’s agent confirmed that the application for eviction was still insisted upon. She stated that arrears had continued to accumulate and by today’s date stood at £10,500. (We note that this is 14 months’ rent in total.)
8. The Applicants’ agent took us through the communications history held by the Applicants’ letting agents and her understanding of the Tenancy and the Property. She admitted that she was unaware whether or not the Respondents had children (but we could see nothing in the papers suggested that they did). She was satisfied that the Property was not adapted for the Respondents’ needs, and knew of no reason why either would require to reside at this specific property. In regard to the communications log of the Applicants’ letting agent, they disclosed the following:
 - a. Various demand and chaser letters sent to the Respondents by the Applicants’ letting agent between 28 October 2020 and 12 January 2021.
 - b. Calls made to the Respondents, and messages left, on 12 January 2021.

- c. On 12 January 2021, the second Respondent called to say that he had not lived at the Property since August 2020.
 - d. Calls made to both Respondents, and messages left, on 3 February 2021.
 - e. On 3 February 2021, the second Respondent returned the call and he said that he had not lived at the Property since October 2020. He made reference to relationship issues with the first Respondent and possible medical issues of the first Respondent (disclosed to us in the papers, but we do not detail in full here).
 - f. Further on 3 February 2021, Universal Credit called to say that an application was received and they would contact further if the application is successful.
 - g. On 26 February 2021, an interpreter called for the first Respondent to say that she was in hospital, was unable to pay rent, and would call when discharged.
 - h. On 30 March 2021, Universal Credit called again to say that the application was still being processed but they were not sure whether or not it would be granted.
9. No motion was made for expenses.

Findings in Fact

10. On 17 June 2019, the Applicants let the Property to the Respondents under a Private Residential Tenancy with commencement on 17 June 2019 (“the Tenancy”).
11. In terms of clause 4 of the Tenancy Agreement, the parties agreed that email could be used for communication of notices in terms of the Tenancy.
12. On 19 February 2021, the Applicants’ letting agent drafted a Notice to Leave in correct form addressed to both of the Respondents, providing the Respondents with notice that they were in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £3,750.
13. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 22 August 2021.
14. On 19 February 2021 the Applicants’ agent served a copy of the Notice to Leave on the Respondents to the email addresses authorised by the Respondents in the Tenancy Agreement.
15. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
16. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon West Lothian Council on the Applicants’ behalf.
17. The Applicants’ agent provided the Respondents with suitable pre-action protocol information by emailed letter on 12 January 2021.

18. As of 9 December 2021, the Respondents remained in arrears of rent in the amount of £10,500 which is the equivalent of 14 months' of rent.
19. The Respondents do not claim to have paid any amount of the arrears remaining as at 9 December 2021.
20. On 3 November 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 9 December 2021 and the details for dialling into the conference call.

Reasons for Decision

21. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondents.
22. We noted that the second Respondent claimed not to reside at the Property, though the service by the Sheriff Officer said that the officer had determined otherwise (somehow). What was clear was that the second Respondent had not removed himself from the Tenancy and nothing that had occurred – particularly because the first Respondent was believed still to reside at the time of the CMD – had brought the Tenancy to an end. We were satisfied that the application should be considered in normal terms against them both.
23. Ground 12 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - (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.*
24. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the increased amount and duration of the arrears.

25. We were more troubled by the information before us that hinted at issues that may have made it unreasonable to evict the Respondents (or at least the first Respondent, as the second Respondent claimed no longer to be residing at the Property – though this was contradicted by the certificate of execution from the Sheriff Officer). Neither Respondent provided any response or denial to the Applicants or Tribunal on these arrears. The last contact from or on behalf of the first Respondent confirmed that she could not pay, was suffering from a medical issue, and was seeking Universal Credit. Universal Credit, however, said that they would revert if the application was granted and ten months after it was lodged, no such confirmation had been received. Further, the first Respondent was said to have potential medical conditions (at least at the start of the year) and had at one point required assistance of an interpreter. There were a number of unanswered questions as to whether she may be entitled to benefits and whether she may have failed to advance such a claim due to medical issues and/or language issues.
26. That said, though we were concerned about such matters, we could not see a way to resolve such concern within the confines of our powers. We cannot instruct social work reports and ample opportunity has been provided to the Respondents to engage with the Applicants and now the Tribunal. Even if we were provided with information on medical issues or delays in benefits, we would still be entitled to consider it reasonable to grant the order, given the significant amount of arrears. We saw nothing to be gained by continuing the application to try and seek information which was not within the power of the Applicants or the Tribunal to obtain without cooperation from the first Respondent, and she had not engaged with the Tribunal thus far. In all the circumstances, we were satisfied to hold that there was no information on benefits before us that made it appropriate for us to consider it unreasonable to grant the order.
27. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicants and, with some concerns, we were satisfied that it was reasonable to grant the order sought.
28. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

29. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that Act.

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/Chair

9 December 2021

Date