



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”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number: FTS/HPC/EV/21/2572

Re: Property at 37D Friar Street, Perth, PH2 0EG (“the Property”)

The Parties:

Mrs Katrina Irvine, Edendale, Isla Road, Perth, PH2 7HQ (“the Applicant”) per her agents, Messrs Macnabs LLP, 10 Barossa Place, Perth PH1 5JX (“the Applicant’s solicitors”)

Mr Callum Ross and Ms Laura Altinsoy, 37D Friar Street, Perth, PH2 0EG (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted.

Background

1. By application dated on 19 October 2021 (“the Application”), the Applicant’s solicitors applied to the Tribunal for an Order for eviction and possession of the Property based on the Grounds that the Applicant intends to sell the Property and that there are rent arrears for more than three consecutive months. The Application comprised a copy of the tenancy agreement, a statement of rent due and owing to September 2021, copy Notices to Leave served on both Respondents and copy Notices under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Perth and Kinross Council, being the relevant local authority. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 23 December 2021 at 10.00 by telephone conference and intimated to the Respondents by Sheriff Officer service.

Case Management Discussion

2. The CMD took place on 23 December 2021 at 10.00 by telephone. The Applicant did not take part and was represented by Ms. Carver of the Applicant’s solicitors. Neither

Respondents took part. No written representations were received from either Respondent.

3. With regard to Ground 1, Ms. Carver explained that she did not have the detail of the steps taken by the Applicant to support her intention to sell. With regard to Ground 12, Ms. Carver confirmed that the rent arrears have risen to £8,580.00, that no contact had been made by the Respondents since the rent arrears began accruing and that the Applicant had been in touch with the Respondents regarding the arrears to no avail, but did not have the detail of the contact made.
4. The Tribunal advised Ms. Carver that it was satisfied that there are rent arrears for more than three consecutive months and so was satisfied in respect of Paragraph 12(2)(a) of Schedule 3 to the Act. The Tribunal was also satisfied in respect of Ground 1 that the Applicant is entitled to sell the Property. However, it was the Tribunal's view that it did not have sufficient information before it to make a decision in respect of those parts of the Act which obliges the Tribunal to consider if it is reasonable to grant an Order and so the Tribunal adjourned the CMD to a Hearing on 19 January 2022 for the Parties to provide the information required to allow the Tribunal to make a decision.

Direction

5. The Tribunal issued the following Direction: -
 1. *With reference to Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act", the Tribunal directs the Applicant to evidence her intention to sell the Property;*
 2. *With reference to Ground 12 of Schedule 3 to the Act and Regulation 4 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020, the Tribunal directs the Applicant to evidence compliance with Regulation 4 which Regulation states that the Scottish Ministers specify the pre-action requirements as " 4 (2) The provision by the landlord to the tenant of clear information relating to: (a)the terms of the tenancy agreement and (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). “

3. The Tribunal directs the Respondents to produce documentary evidence of any applications for state benefits applied for and the outcome of such applications made by them in respect of the rent arrears accrued by them and

4. The Tribunal directs the Applicant and the Respondents to provide evidence or information in respect of their personal and other circumstances which they wish the Tribunal to consider in reaching a decision that it is reasonable to issue an eviction order in terms of Paragraph 12 3(b) of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016”

6. The Applicant’s solicitors, on her behalf, complied with the Direction by email dated 11 January 2022 which included two emails from the Applicant to the Respondents. The first email dated 5 July 2020 advises the Respondents to enquire about entitlement to benefits. The second email dated 3rd March 2021 warns of court action and is replied to by the Respondent stating that they require an eviction order to be granted before there is any prospect of council housing being offered.

7. The Applicant’s solicitors, on her behalf, advised that the Applicant no longer wishes to rely on Ground 1, sale of the Property, and relies solely on Ground 12, rent arrears.

8. The Respondents did not comply with the Direction.

Hearing

9. The Hearing took place on 19 January 2022 at 10.00 by telephone. The Applicant did not take part and was represented by Ms. Carver of the Applicant’s solicitors. Neither Respondents took part. No written representations were received from either Respondent.

10. With reference to the Application and the response to the Direction, Ms. Carver submitted that the Respondents had not paid rent in almost two years, that the Respondents had not been in contact with the Applicant and have not engaged with her in any meaningful way, the relationship between the parties having broken down. She accepted that the Applicant had not fully complied with Regulation 4 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020 and explained that, at that time, a Notice to Leave had been in place. Although that Notice to Leave was discovered to be invalid, the Applicant treated it as being in effect and preventing contact with the Respondents. Ms. Carver submitted that the level of rent arrears was unsustainable and unfair for either Party. She submitted that the Applicant had not had the benefit of professional advice until she instructed the Applicant’s Agents and so took a lay person’s approach, nonetheless she suffered a significant financial impact. With regard to the circumstances of the Respondents, Ms. Carver advised that the second-named Respondent had been in touch following receipt of the

Applicant's response to the Direction and had advised that she was no longer resident in the Property, having left shortly after the tenancy began and her relationship with the first-named Respondent ended and that advising that she resided abroad.

11. As there were no witnesses, the Hearing closed.

Tribunal's Assessment of Evidence.

12. The evidence before the Tribunal is the Application, the response and documents submitted by the Applicant's Agents in compliance with the Direction and Miss Carver's submissions at the Hearing.

13. Having no challenge to the evidence, the Tribunal accepted it at face value.

Findings in Fact

14. From the Application, the CMD and the Hearing, the Tribunal made the following findings in fact:

- i) There is a tenancy of the Property between the Parties at a monthly rent of £390.00;
- ii) Rent amounting to £8,580.00 is unpaid from March 2020 to January 2022, which rent arrears are for more than three consecutive months;
- iii) The Applicant complied in part with Regulation 4 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020 before applying for an eviction order;
- iv) The level of rent arrears has had a significant financial impact on the Applicant;
- v) The Respondents have not made attempts to engage with the Applicant to minimise their indebtedness to her or to discuss ways in which the tenancy could continue.

Issue for the Tribunal

15. The issue for the Tribunal is whether or not the Applicant has satisfied the Tribunal in respect of the terms of Paragraph 12 of Schedule 3 of the Act ("Paragraph 12") regardless of whether the Respondents have taken part in the proceedings.

16. Paragraph 12 states:

"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.

(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."

Decision and Reasons for Decision

17. From the CMD, the Tribunal was satisfied that Paragraph 12(2)(a) was satisfied and so it follows that Paragraph 12(3)(a) is also satisfied. Therefore, the Tribunal proceeded to consider its decision in respect of the remainder of Paragraph 12.
18. With regard to Paragraph 12 (2)(b) the only evidence before the Tribunal is the statement of rent due and owing and so the Tribunal could not be satisfied that the tenant 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.
19. The Tribunal then had regard to Paragraph 12 (3)(b) and turned its mind to determine if it is satisfied that it is reasonable on account of the fact of the rent arrears to issue an eviction order. In this respect, the Tribunal had regard to Sub-paragraphs (3A), (3B) and (4) of Paragraph 12.

20. Sub-paragraph (3A) states that Sub-paragraph (3B) applies where the Tribunal is satisfied 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. The Tribunal is so satisfied and so Sub-paragraph (3B) applies
21. Sub-paragraph (3B) states that, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order. In this matter the Applicant did comply in part with the pre-action requirements before the Application for an eviction order was made on her behalf. The Tribunal accepts the Applicant's position that the Respondents failed to engage with her and so made it difficult for her to comply with the pre-action requirements to a greater extent and took the view that the Applicant complied with these requirements as far as she was able in the circumstances and so took the view that it is reasonable to issue an eviction order against the tenant.
22. Sub-paragraph (4) states that, in considering for the purposes of Sub-paragraph (3) whether it is reasonable to issue an eviction order against the tenant 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 Respondents have not engaged with the Applicant or with the Tribunal in respect of their entitlement to relevant benefits. Indeed, the Respondents have not engaged with the Tribunal or the tribunal process in any way. Whilst the onus is not on the Respondents to disprove the Applicant's case, the Tribunal directed the Respondents to provide information relating to their personal circumstances and the Respondents did not do so. The Tribunal is satisfied that the Respondents are aware of the proceedings at each stage and are aware of the Tribunal's Direction. It is reasonable, therefore, for the Tribunal to conclude on the balance of probabilities, that there are no relevant circumstances that the Respondents wish the Tribunal to consider in respect of the Respondents' position in respect of relevant benefits and so took the view that it is reasonable to issue an eviction order against the tenant.
23. The Tribunal then had regard to Paragraph 12 (3)(b) and turned its mind to determine if it is satisfied that it is reasonable on account of the fact of the rent arrears to issue an eviction order. The Tribunal took the view that the level and duration of rent arrears is significant and agreed with Ms. Carver that this level and duration is unsustainable for both Parties and so took the view that, in all the circumstances, it is reasonable to issue an eviction order.
24. Accordingly, the Tribunal grants the Application and makes an Order for eviction in terms of Ground 12 of Schedule 3 to the 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.

K Moore

21 January 2022

Legal Member/Chair

Date