

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/21/2586

Re: Property at Flat 7, 38 Arbroath Road, Dundee, DD4 6EP (“the Property”)

Parties:

Mrs Helen Cargill, 8 Middlebank Crescent, Dundee, DD2 1HY (“the Applicant”)

Mr Ross Heenan, Flat 7, 38 Arbroath Road, Dundee, DD4 6EP (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

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

On 18th October 2021 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement showing a start date of 28th June 2020 and dated 27th June 2020 with rent due of £525 per calendar month;
2. Copy Notice to Leave dated 6th April 2020 with a leave date of 12th October 2021;
3. Section 11 Notice;
4. Documentation in relation to the pre-action requirements;
5. Non Resolution certificate from SDS Resolution
6. Rent Statement

The Application was served on the Respondent by Sheriff Officers on 24th November 2021.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented herself. There was no attendance by the Respondent or any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

The Applicant said that she had served a Notice to Leave on the Respondent in April 2021 as he was in arrears of rent by three months by then, She had not received any rent from him since.

The Applicant was asked to address the tribunal on reasonableness. She said that she had spoken, texted and emailed the Respondent frequently. She had entered in to two arrangements with him for him to pay the arrears and ongoing rent. She had engaged the services of SDS Resolution Service, but he had not responded. The Tribunal noted that the Applicant had fully complied with the pre action requirements brought in by the Coronavirus (Scotland) Act 2020, and that her engagement and record keeping was of the highest standard the Tribunal members had seen.

The Applicant was asked some questions by the Tribunal and replied that the Respondent lived alone in the property, but had his two children, aged 3 and 5, to stay every weekend. He worked as a milkman with Kerrs Dairy and had worked throughout the pandemic. She had regularly seen his works van parked outside the property. She had signposted the Respondent to available benefits but he told her that he was not eligible. She was not aware of what contact he had had with the local authority.

The respondent was asked if she was at risk financially by not receiving the rent. She said that she was not, but she was worried that the Respondent's debt was becoming unmanageable.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement was dated 27th June 2020 and commenced on 28th June 2020;
3. A Notice To Leave was served timeously and correctly;
4. The correct notice period in terms of the amendments by the Coronavirus (Scotland) Act 2020 has been given;

5. This Application was served on the Respondent by Sheriff Officer on 24th November 2021;
6. The Applicant has complied fully with the pre-action requirements laid down in the Coronavirus (Scotland) Act 2020;
7. At the time the Notice to Leave was served the arrears were ££2661.50;
8. At the time the application was lodged with the Tribunal the arrears were £6053;
9. At today's date the arrears are £7022;
10. The ground of eviction has been met;
11. It is reasonable to grant an order for eviction.

Reasons for Decision

The Tribunal were of the view in this case. that the Applicant had established Ground 12 as the Respondent had been in arrears for three or more consecutive months.

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation 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)Schedule 3 (eviction grounds) has effect as if—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (a), the word "and" were repealed,

(iii)after paragraph (b) there were inserted " , and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for the word "must" there were substituted " may ",

(ii)after paragraph (b), the word "and" were repealed,

(iii)after paragraph (c) there were inserted " , and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “3 months” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “home” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b) the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,

(ii)for paragraph (c) there were substituted—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

- (iii) sub-paragraph (3) were repealed,*
- (iv) in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,*
- (h) in paragraph 10(2) (not occupying let property)—*
- (i) in the opening words, for the word “must” there were substituted “ may ”,*
- (ii) after paragraph (a), the word “and” were repealed,*
- (iii) after paragraph (b) there were inserted “, and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*
- (i) in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*
- (j) in paragraph 13(2) (criminal behaviour)—*
- (i) in the opening words, for the word “must” there were substituted “ may ”,*
- (ii) after paragraph (a), the word “and” were repealed,*
- (iii) after paragraph (b) there were inserted “, and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it is reasonable to grant the order.

The Tribunal found the Applicant to be credible and reliable. She had made many appropriate approaches to the Respondent. She had offered payment plans and assistance with accessing benefits. The Respondent had failed to pay any rent after April 2021. He has given no reason for so doing. He is in employment and should be able to make at least some contribution towards the rent. He has two children who come to him at weekends, but they do not reside with him permanently. In all the circumstances, and in the absence of any evidence from the Respondent to the contrary, it is reasonable to grant the order for eviction.

The Tribunal decided, however, that given the time of year, and the fact that the Applicant confirmed that she was not experiencing hardship by the lack of payment of rent, they would suspend the issue of the order until 22nd February 2022.

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: Alison Kelly

Date: 23rd December 2021

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