



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/21/2733

Re: Property at 337 Grathellen Court, Merry Street, Motherwell, ML1 4BQ (“the Property”)

Parties:

Mr Colin MacLeod, 89 James Street, Motherwell, ML1 3JP (“the Applicant”)

Mr Garry Dunnery, 337 Grathellen Court, Merry Street, Motherwell, ML1 4BQ (“the Respondent”)

Tribunal Members:

Andrew Upton (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 eviction order should be granted, and that the Private Residential Tenancy between the parties terminated on 15 February 2022.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 15 February 2022, together with the related Application CV/21/2736. The Applicant was represented by Mr Gildea, Solicitor Advocate. The Respondent was neither present nor represented at the CMD.
2. In this Application, the Applicant seeks an eviction order. He says that he is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy Agreement which began on 28 October 2020. In terms thereof, the contractual monthly rent was £550. The Applicant says that the Respondent has been in rent arrears since 28 December 2020. Since that date, the Respondent has only made four

payments to the Applicant's letting agent, being (i) £550 on 5 February 2021, (ii) £175 on 21 June 2021, (iii) £200 on 2 August 2021, and (iv) £200 on 9 August 2021. By Notice to Leave dated 30 April 2021, the Applicant gave notice to the Respondent of his intention to raise proceedings for eviction at the Tribunal on or after 3 November 2021 in the event that he did not bring his rent account up to date. The Applicant contends that the Respondent failed to do so.

3. At the CMD, Mr Gildea advised the Tribunal that the Respondent remained in rent arrears of at least £4,925. He said that attempts had been made by the Applicant's letting agent to engage with the Respondent to agree a payment plan, but promises of payment were unfulfilled by the Respondent. He said that the Property was flat, and that it had not been adapted to meet any special needs of the Respondent. He was not aware of the Respondent requiring to access any local specialist services. The Respondent resides alone at the Property without any dependents, and that the Property was let to him for sole occupancy. The Applicants understand that the Respondent is in employment as a joiner. The Applicants are not aware of the Respondent being in receipt of any housing or other benefits. Whilst there is no mortgage lending over the Property, the Respondent's continued occupation without paying rent is having a detrimental effect on the Applicant. In particular, the Applicant is seventy years old and has required to take on employment working nightshifts to make ends meet. He requires a rental income from the Property. Insofar as the Pre-Action Requirements are concerned, Mr Gildea submitted that the Notice to Leave provided information to the Respondent regarding advice agencies, the extent of his arrears, and what he required to do to avoid proceedings. Further, the letting agent had engaged with the Respondent to try to agree a payment plan, but the Respondent had failed to keep to agreed payments.
4. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), the Tribunal may do anything at a Case Management Discussion that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making any decision, including the need to avoid unnecessary delay.
5. The Respondent has received notice of the Application and the CMD. He has chosen not to attend the CMD to dispute the Application. The Tribunal therefore concludes that the allegations within the Application are not in dispute. The Tribunal does not consider that a Hearing is required in such circumstances.
6. In terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"):-

“51 First-tier Tribunal's power to issue an eviction order

- (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 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.

52 Applications for eviction orders and consideration of them

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (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.

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,
 - (b) in the case of a notice served before 3 October 2020, expires on the day falling—
 - (i) 28 days after it begins if subsection (3) applies,
 - (ii) three months after it begins if subsection (3A) applies,
 - (iii) six months after it begins if neither subsection (3) nor (3A) applies, and
 - (c) in the case of a notice served on or after 3 October 2020, expires on the day falling—
 - (i) 28 days after it begins if subsection (3B) applies,
 - (ii) three months after it begins if subsection (3C) applies,
 - (iii) six months after it begins if neither subsection (3B) nor (3C) applies.
- (3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home.
- (3A) This subsection applies if—
 - (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the landlord intends to live in the let property,
 - (ii) that a member of the landlord's family intends to live in the let property,
 - (iii) that the tenant has a relevant conviction,
 - (iv) that the tenant has engaged in relevant anti-social behaviour,

- (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour,
 - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
 - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or
- (b) the only eviction grounds stated in the notice to leave are—
 - (i) the eviction ground mentioned in subsection (3), and
 - (ii) an eviction ground, or grounds, mentioned in paragraph (a).
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (a) that the tenant is not occupying the let property as the tenant's home,
 - (b) that the tenant has a relevant conviction,
 - (c) that the tenant has engaged in relevant anti-social behaviour, or
 - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.
- (3C) This subsection applies if—
 - (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the landlord intends to live in the let property,
 - (ii) that a member of the landlord's family intends to live in the let property,
 - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
 - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or

- (b) the only eviction grounds stated in the notice to leave are—
 - (i) an eviction ground, or grounds, mentioned in subsection (3B), and
 - (ii) an eviction ground, or grounds, mentioned in paragraph (a).
- (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).

Sch.3, Ground 12 Rent arrears

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) [...]
- (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.
- (7) Regulations under sub-paragraph (6) may in particular make provision about—
 - (a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,
 - (b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
 - (c) such other matters as the Scottish Ministers consider appropriate."

7. In terms of Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations"):-

"4.— *Pre-action requirements for private residential tenancies*

- (1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act¹, the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.
- (2) The provision by the landlord to the tenant of clear information relating to—

- (a) the terms of the tenancy agreement,
 - (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).”

8. Having considered the Application, heard from the Applicant's Representative and taken account of the Respondent's failure to attend the CMD, the Tribunal was satisfied that:-

- a. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy Agreement which began on 28 October 2020.
- b. In terms thereof, the contractual monthly rent was £550.
- c. The Respondent has been in rent arrears since 28 December 2020.
- d. Since that date, the Respondent has only made four payments to the Applicant's letting agent, being (i) £550 on 5 February 2021, (ii) £175 on 21 June 2021, (iii) £200 on 2 August 2021, and (iv) £200 on 9 August 2021.
- e. By Notice to Leave dated 30 April 2021, the Applicant gave notice to the Respondent of his intention to raise proceedings for eviction at the Tribunal on or after 3 November 2021 in the event that he did not bring his rent account up to date, which was a period in excess of six months.

- f. The Notice to Leave provided sufficient notice in terms of s.54 of the 2016 Act
 - g. The Respondent has been in rent arrears for a period in excess of three consecutive months.
 - h. The Respondent is in rent arrears in a sum in excess of one month's rent.
 - i. The Respondent's rent arrears have accrued wholly during the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.
 - j. For the purposes of Regulation 4(2) of the 2020 Regulations, the only information provided by the Applicant was (i) the Tenancy Agreement, and (ii) the Notice to Leave.
 - k. For the purposes of Regulation 4(3) of the 2020 Regulations, the Applicant, acting through his letting agent, has made reasonable efforts to agree a reasonable payment plan with the Respondent.
 - l. The Respondent remained in rent arrears of at least £4,925.
 - m. The Property is a flat.
 - n. The Property has not been adapted to meet any special needs of the Respondent.
 - o. The Respondent resides alone at the Property without any dependents.
 - p. The Property was let to the Respondent for sole occupancy.
 - q. The Respondent is in employment as a joiner.
 - r. The Respondent is not in receipt of any housing or other benefits.
 - s. There is no mortgage lending over the Property.
 - t. The Applicant is seventy years old.
 - u. The Applicant has required to take on employment working nightshifts to make ends meet.
 - v. The Applicant requires a rental income from the Property.
9. Having regard to these matters, the Tribunal was satisfied that the requirements of Ground 12 are established. Further, the Tribunal was satisfied that it is reasonable to grant the eviction order under that Ground. For the purposes of s.51(4), the Tribunal determined that the tenancy ended on 15 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.

Andrew Upton

Legal Member/Chair

15 February 2022

Date