



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/21/2856

Re: Property at 9 Hollybush Lane, Crathes, Banchory, AB31 5JS (“the Property”)

Parties:

LAR Housing Trust, F3 Buchan House, Carnegie Campus, Enterprise Way, Dunfermline, Fife, KY11 8PL (“the Applicant”)

Ms Savannah Sheriffs, 9 Hollybush Lane, Crathes, Banchory, AB31 5JS (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for eviction against the Respondent.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided copy Tenancy Agreement between the parties, Notice to Leave with Sheriff Officers certificate of service, rent statement, Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council and proof of delivery and copy correspondence between the parties.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 28 January 2022, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and

instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers. The Respondent was also given the opportunity to make written representations in response to the application however nothing was received from her in that regard.

- 3 On 27 January 2022 the Applicant emailed the Tribunal with an updated rent statement showing arrears of £7059 as at 10 January 2022.

The Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 28 January 2022. Ms Nicola Caldwell appeared on behalf of the Applicant. There was no appearance by, or on behalf of, the Respondent.
- 5 Ms Caldwell addressed the Tribunal on the order sought. She advised that arrears had increased to the sum of £7059. The Respondent's payments had been sporadic throughout the tenancy. The Applicant had been receiving the housing element of universal credit directly, however the Respondent had recently requested it be paid to herself. She has subsequently failed to make the payments to the rent account. The Applicant had complied with the pre-action requirements by corresponding with both the Respondent and the local authority regarding the ongoing proceedings. The Respondent had been offered support but had proved difficult to contract. In response to questions from the Tribunal Ms Caldwell advised that there were three children in the household under the age of 10. The Tribunal noted that the Respondent may be seeking alternative accommodation with the local authority.

Relevant Legislation

- 6 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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, and*

(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.
(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. [ground 10]

(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, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(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, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(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, [ground 17] 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, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(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. [ground 15]

(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, [ground 4]*
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
- (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
- (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 [ground 17]*
- (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).*

62 Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—*
 - (a) is in writing,*
 - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*
 - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
 - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*
- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*
- (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*
- (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

Schedule 3, Part 12

- (1) It is an eviction ground that 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 subparagraph (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.

- 7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

- 8 The Applicant entered into a tenancy agreement with the Respondent which commenced on 15th April 2019.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 The Applicant's Representative delivered a Notice to Leave to the Respondent by Sheriff Officers on 30th April 2021. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 3 November 2021.
- 11 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 12 In terms of the said Tenancy Agreement the Respondents undertook to make payment of rent at the rate of £783 per month.
- 13 As at the date of the Notice to Leave rent arrears of £3762 were outstanding.
- 14 As at 28 January 2022, rent arrears in the sum of £7059 are outstanding.
- 15 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 16 The Applicant has sought to enter payment agreements with the Respondent and has provided information on where to seek advice and assistance to address her rent arrears.
- 17 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.
- 18 It is reasonable to make the order sought by the Applicant.

Reasons for Decision

- 19 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to take part in the proceedings but had chosen not to do so. On that basis the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no facts in dispute.
- 20 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that the Notice to Leave was competent.
- 21 The Tribunal accepted that there were rent arrears outstanding in the sum of £7059, which far exceeded an amount equivalent to three months rent. It was apparent from the rent statement provided that payments had been sporadic, and the Tribunal accepted the evidence of Ms Caldwell that the Respondent had requested her universal credit be paid to her, instead of directly to the Applicant.
- 22 The Tribunal was also satisfied that the Applicant had complied with the pre-action requirements on the basis of the correspondence sent to the Respondent. It was acknowledged that there were young children in the property however the Tribunal noted that the Applicant would continue to engage with the Council to ensure support could be offered to the Respondent in obtaining alternative accommodation. Accordingly, having regard to the level of arrears, the period over which arrears had accrued and the failure on the part of the Respondent to engage, the Tribunal considered that it would be reasonable to grant the order for eviction. There was nothing before the Tribunal to contradict the evidence put forward by the Applicant.
- 23 The Tribunal therefore determined to make an eviction order. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

Legal Member: Ruth O'Hare

Date: 28th January 2022