



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/21/2874

Re: Property at 15 Murray Crescent, Newmains, Wishaw, ML2 9EP (“the Property”)

Parties:

Mr Michael Pitt, 16 Argarmeols Road, Formby, Liverpool, L37 7BU (“the Applicant”)

Ms Carol Campbell, 15 Murray Crescent, Newmains, Wishaw, ML2 9EP (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Introduction

1. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. Intimation of the application was effected upon the respondent by Sheriff Officers on 18 February 2022.

Procedural Background

3. An initial Case Management Discussion (CMD) took place on 1 April 2022 at 2.00 pm. The respondent’s solicitor advised at the commencement of the hearing that the rent arrears relied upon were not in dispute. The eviction was

not opposed on the merits. Opposition to the application was based only upon the reasonableness of the order sought.

There were a number of matters founded upon by the respondent as to why an eviction order would be unreasonable. Reference was made to the cause of the arrears being due to the behaviour and actions of an ex-partner of the respondent. He was not a named tenant. It was stated that an application had been made for Discretionary Housing Payments to cover part of the arrears. The respondent clarified that this was not expected to clear much of the arrears. No evidence of such an application was produced. The respondent also relied upon the poor health of both herself and her daughter. No independent evidence of such difficulties was available.

The Tribunal determined that it was not fair to determine the issue of reasonableness at the CMD in the absence of further documentary evidence being produced. Accordingly a full hearing was fixed to take place on 3 May and a Direction issued to regulate further procedure.

4. The respondent produced no further additional documentation in advance of, or at, the full hearing on 3 May 2022. The Tribunal acceded to the respondent's solicitors submissions that the hearing ought to be adjourned for further opportunity to allow such information to be produced. In the circumstances, the hearing was discharged and a fresh hearing fixed to take place on 10 June 2022.

Hearing 10 June 2022

5. The applicant represented his own interests. The respondent was present and was represented by Claire Cochrane, solicitor.
6. The day before the hearing the respondent's solicitor emailed the Tribunal to advise that the application was no longer being opposed. The respondent wished to consent to an eviction order being granted. It was submitted that a delay be ordered in the execution of the order under Rule 16A(d) to allow for additional time for the respondent to progress her homeless application to the local authority. This submission was repeated orally at the commencement of the hearing.
7. The Tribunal made further enquiry with both parties, invited further submissions and then adjourned to consider all matters. The Tribunal thereafter reconvened and advised parties of their decision orally.

Findings and Reasons

8. The property is 15 Murray Crescent, Newmains, Wishaw ML2 9EP.
9. The applicant is Mr Michael Pitt. He is the heritable proprietor and the registered landlord. The respondent is Ms Carol Campbell who is the tenant.

10. The parties entered into a private residential tenancy which commenced on 22 February 2019. The rent was stipulated at £500 per month.
11. The respondent has fallen into arrears of rent. At the time that the Notice to Leave was prepared, the rent arrears stood at £2,221. As at the date of application, the rent arrears had risen to £4,081. As at 10 June 2022 the rent arrears outstanding remain well over three months. This is accepted by the respondent.
12. The current eviction proceedings are based upon arrears of rent and the relevant ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.
13. Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods had been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and was one of 6 months at the time that the Notice to Leave was served.
14. The Notice to Leave which is relied upon is dated 14 December 2020. With reference to Section 62 of the Act, the day specified as being the earliest day upon which proceedings before the Tribunal can be raised requires to be a total of the notice period of 6 months plus an additional three days. That date referred to within the Notice to Leave was specified as 20 June 2021. This is an additional six days. This additional period does not invalidate the Notice to Leave.
15. The applicant has produced Post Office track and trace data which discloses that the Notice to Leave was received by Royal Mail on 15 December 2021. The Royal Mail electronic track and trace system does not disclose evidence of the item having been delivered. The respondent accepts however that she received the Notice to Leave on or about 16 December 2021.
16. The Tribunal was satisfied that the Notice to Leave was validly prepared and served and can be relied upon. No challenge has been taken to the Notice to Leave on behalf of the respondent.
17. The Tribunal was satisfied that more than three consecutive months of rent was unpaid at the time that the Notice to Leave was served and at the date of the hearing. This establishes ground 12.
18. Despite the order being unopposed and consented to the Tribunal proceeded to consider the issue of reasonableness independently.
19. The parties have had a long-term landlord/tenant relationship prior to the tenancy at Murray Crescent, Newmains which is the focus of this application. The respondent had rented an earlier alternate property from the applicant. She was unable to afford to live in that other property and the applicant assisted

her by allowing her to move to Murray Crescent, Newmains. There is good evidence from the applicant, which the Tribunal accepted, that he has always acted as a reasonable and caring landlord.

20. The respondent is unemployed. She is the single parent of her daughter aged 13 years. She is in receipt of State Benefits.
21. The respondent relies upon a number of health difficulties which she says that both she and her daughter suffer from. She has been represented throughout the proceedings and has been given time to produce evidence of these conditions. No vouching has been produced. The applicant however does not dispute that both the respondent and her daughter have health difficulties.
22. The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondent in the absence of her making rental payments. There is a long history of rent arrears.
23. Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020. The Tribunal was satisfied that the 2020 Regulations had been complied with by the applicant.
24. The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).
25. The applicant has served a valid Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. It is most likely that once the eviction order is granted the local authority will make alternative accommodation available for the applicant and her daughter.
26. The respondent was not ultimately opposed to the application being granted and the tribunal attached significant weight to that fact.
27. In all the circumstances, the Tribunal concluded that it was reasonable to make the eviction order sought. In recognition of the personal circumstances of the respondent and of her daughter, the Tribunal extended the period by which an eviction could be carried out beyond the standard 30 days. The date was fixed at 1 August 2022 with the consent of the applicant.

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.

R Mill

10 June 2022

Legal Member/Chair

Date