

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/21/3066

Re: Property at 1C Innes Park Road, Skelmorlie, PA17 5BA (“the Property”)

Parties:

Mr Colin Galloway, 12 Dog Close, Adderbury, Banbury, OX17 3EF (“the Applicant”)

Mr John Cole, 1C Inness Park Road, Skelmorlie, PA17 5BA (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made dated 8 December 2021 in terms of Rule 109 of the Chamber Rules for a Private Residential Eviction Order (along with a conjoined civil application for rent arrears ref FTS/HPC/CV/21/3067). Along with the application form, the Applicant’s representative lodged the following documents:

- Copy tenancy agreement
- Copy Notice to Leave dated 15 September 2021 and intimation email
- Copy expired Notice to Leave
- PARs Letters
- Rent statement
- Section 11 notice to North Ayrshire Council and intimation email

2. A paper apart was also lodged detailing the various relevant sections of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In particular, the Applicant sought for the application to be entertained

notwithstanding the fact that the notice period in the Notice to Leave had not yet expired. Section 52(4) of the 2016 Act provides:

“(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.”

3. The Applicant made submissions in the paper apart that it was reasonable in the circumstances of the application for it to be heard early. The reasons advanced in the paper apart for this were that *“the Applicant has made several attempts to assist the tenant and ultimately agreed a payment plan with the Respondent. Despite the attempts made and the agreement being reached the Respondent has started to accrue further arrears. The Applicants’ right to rent is prejudiced by the Respondent’s inability to meet the monthly rent. It is not in the interests of the Respondent for the arrears to continue to accrue. If the application can be heard early then it may reduce the length of time parties are affected by this situation.”*

4. It was further submitted that, in all the circumstances, it is reasonable that an order for possession of the Property be granted.

5. The application was accepted and assigned to a Case Management Discussion today. Intimation of the application and the case management discussion was served on the Respondent by Sheriff Officers on 24 January 2022. The Respondent was invited to make written representations by 10 February 2022. The letter intimating details of the application and case management discussion included the following paragraph:

“ The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

6. No written representations have been received from the Respondent.

7. The day before the case management discussion the Applicant’s agents sent an email to the Tribunal with an updated rent statement showing that the arrears now stood at £2400.

The Case Management Discussion

8. The case management discussion took place today by teleconference. The applicant’s agent, Alexandra Wooley, Trainee Solicitor, Messrs. Bannatyne Kirkwood France & Co, appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent.

9. The Applicant's agent invited the Tribunal to entertain the application early on the basis that the Respondent was well aware that it was the Applicant's intention to recover possession of the Property. A previous Notice to Leave had been served on 28 July 2020 which had now expired. There had been a previous eviction application made to the Tribunal which had failed, according to the Applicant's agent's submissions, as a result of administrative errors on the part of agents and the Tribunal. Rent arrears kept accruing and had been accruing for a significant period of time and it was in the interests of both parties that the eviction order application be heard early.

10. The Applicant's agent also advised that there had been no communication with the Respondent for almost a year and the Respondent had not agreed any kind of repayment plan.

11. In relation to whether it was reasonable for an eviction order to be granted in the circumstances, the Applicant's agent again referred to the significant amount of rent arrears which had been outstanding for some time. There had been no communication with the tenant for over a year. The Applicant's agent understood that the Respondent had changed the locks on the Property and therefore the Letting Agents could not access the Property to carry out routine inspections etc. There was no correspondence lodged in this regard.

12. On questioning by the Tribunal, the Applicant's agent had no further information about the payment plan referred to in the Paper Apart to the Application which appeared to be contradicted by her oral submissions that no payment plan had been entered into by the Respondent. The only information that the Applicant's agent had about the Respondent was that she understood that he lived alone and had had employment as a pipefitter and had intimated to the Applicant in the middle of 202 that his work had stalled due to the pandemic.

13. On being further questioned about compliance with the Pre-action requirements, the Applicant's agent was unable to point to any further correspondence other than the one letter in the Tribunal's file of papers. She advised that she believed that the Letting Agents and Applicant would have made a number of call and emails etc to try and engage with the Respondent. There was no further information available as to what attempts had been made to engage with the Respondent in relation to the rent arrears.

14. It was the Applicant's agent's submission that Ground 12 of Schedule 3 of the 2016 Act had been established and that it was reasonable for the eviction order to be granted as the Applicant was being prejudiced by not receiving rent.

Findings in Fact

15. A private residential tenancy agreement was entered into by the parties commencing 13 November 2019.

16. In terms of the private residential tenancy agreement rent was due to be paid in the sum of £450 per calendar month.

17. The Respondent has fallen into significant rent arrears which now total £2400.

18. A Notice to Leave was served on the Respondent on 15 September 2021 advising that proceedings for an eviction would not be raised before 18 March 2022.

19. Proceedings were raised for an eviction order on 8 December 2021

Reasons for Decision

20. In relation to whether it was reasonable to entertain the application early, the Tribunal took into account the submissions made by the Applicant's agent both orally and in the written papers. The Tribunal also took into account that, while not much was known about the Respondent's personal circumstances, it appeared that the pandemic had had an adverse effect on his earnings. The administrative errors referred to by the Applicant's agent in relation to the previous eviction application, were in no way caused by the Respondent. The previous Notice to Leave had expired and the Respondent was entitled to rely on this expiry. In addition, the Scottish Parliament had amended legislation to increase notice periods in Notices to Leave to afford protection to tenants financially adversely effected by the pandemic. The Respondent appeared to be exactly the kind of person the changes in the legislation were designed to protect.

21. It was the Tribunal's view that it would not be reasonable to entertain the application at this time in terms of Section 52(4) of the 2016 Act.

22. The Tribunal noted that, even if they had entertained the application early in terms of section 52(4) of the 2016 Act, it would not have been reasonable to grant an eviction order at present. The Tribunal does not have enough information about the Respondent's personal circumstances. There is not enough evidence to show to what extent the Applicant has complied with the Pre-action Requirements. There is also inconsistency between the papers and the oral submissions today about whether a payment plan was agreed between the parties and, if so, what the terms of that payment plan were.

Decision

23. The First-tier Tribunal for Scotland (Housing and Property Chamber) refused an application for an eviction order against the Respondent in terms of section 51 of the 2016 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.

A. M

25 February 2022

Legal Member/Chair

Date