



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/21/3156

Re: Property at 126 Neilston Road, Flat 1/2, Paisley, PA2 6EP (“the Property”)

Parties:

Ms Madhu Jain, 22 Seafield Road, Bearsden, Glasgow, G61 3LB (“the Applicant”)

Mr Judzos Kavaliukas, 126 Neilston Road, Flat 1/2, Paisley, PA2 6EP (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 30 May 2022 by tele-conference. The Applicant was represented by their letting agent, Ms Harper of Castle Residential. The Respondent did not attend nor was he represented. The papers had been served on the Respondent by Sheriff Officer on 14 April 2022. The Tribunal, was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in his absence.
 3. An application was also heard at the same time under Rule 111 of the Rules and under case reference FTS/HPC/CV/21/3157.
 4. The Applicant’s representative moved for the Order for Repossession to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 19 July 2019. The Respondent had fallen into arrears of rent in September 2019 and whilst small payments were being made each month, these did not cover the monthly rent meaning the rent arrears accrued month on month. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 16 April 2021 by email. The arrears at the date of the CMD stood at £3,321.
 5. The Applicant’s representative submitted that the Pre-Action Requirements (“PARs”) had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Screenshots of emails had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
 6. The Respondent had been in employment at the start of the tenancy but it was unknown if that remained the case. He was believed to be a single man with no dependants. The tenancy was in his sole name. The last contact with the tenant was prior to Christmas when a visit to the Property was carried out. The letting agent was not given access but the Respondent confirmed that he could not afford the rent each month. He has failed to engage with correspondence. A member of the letting agent’s staff speaks Arabic and has tried to translate for the tenant but this has not helped in getting the tenant to engage.
 7. The Tribunal pointed out that the email address in the Agreement for the tenant was stated as being kawjuozzus@gmail.com but the email used for service of the Notice to Leave (and other correspondence) was kawjuozrus@gmail.com. Emails also appear to have been sent to opgrus66@gmail.com. The Tribunal requested clarification on what was the correct email address for the tenant, to be satisfied of effective service. Ms Harper advised that emails had been sent initially to the email address in the lease it these bounced back. The email address was changed following a visit to the Respondent, and these emails have not bounced back. No email correspondence from the Respondent to the Applicant or the letting agent was lodged to show that the email address was correct.

8. The CMD was adjourned to a further CMD for the Applicant to provide the following information:
 - (i) Evidence to satisfy the Tribunal that the email address used to serve the Notice to Leave is indeed an email address provided by the Tenant for such a purpose; and
 - (ii) Copies of all emails and letters issued to the Respondent to comply with the Applicant's obligations under the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
9. A further CMD took place on 11 July 2022. The Applicant was again represented by Ms Harper of Castle Residential and was joined on the call by her colleague, Ms McLellan. The Respondent again did not attend nor was he represented. Following the previous CMD, the Applicant's representative had lodged evidence of the Notice to Leave having been served by recorded delivery and signed for on 20 April 2021. Evidence was also lodged showing the tenant having emailed the letting agent to advise of his change of email address. Also lodged were excerpts from the letting agent's computer system showing a number of emails and text messages sent to the Respondent advising him of the rent arrears and signposting him to advice agencies for assistance.
10. The Applicant's representative again moved for the Order to be granted as sought. Since the last CMD the Respondent had paid a lump sum of £980 to his rent account, as well as other small payments. Any payments made were sporadic. However, there had been no contact from the Respondent, nor any arrangement made for payment of the remainder of the arrears. The arrears at the date of the CMD stood at £2,330. The Respondent was believed to now be working in the construction industry. He lived alone with no dependants.
11. The Applicant's representative submitted that the Pre-Action Requirements ("PARs") had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Emails and text messages of 8 August 2020, 1 October 2020, 19 June 2021, 19 July 2021, 19 August 2021, 18 October 2021, 12 November 2021, 17 December 2021, 10 January 2022, 14 March 2022, 13 April 2022, 13 May 2022 and 25 May 2022 had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
12. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement

(vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

- Findings in Fact

13. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 19 July 2019;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £249 per calendar month payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 20 April 2021;
- (iv) The Respondent has been in continuous arrears of rent since the start of the Agreement;
- (v) The Respondent is in arrears of rent amounting to £2,330 at the date of the CMD;

- Reasons for Decision

14. Section 51 of the 2016 Act states as follows:

51 (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 or must 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.

15. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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.

(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.

16. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD and further that the arrears of rent are an amount which is greater than the amount due to be paid as one month's rent. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

17. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since the start of the Agreement. No explanation had been given by him as to the reason for falling into arrears, nor any proposals for repayment made. The Tribunal was satisfied that the

Applicant had taken appropriate steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

18. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

F. W

Legal Member/Chair

Date: 11 July 2022