



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/21/3193

Re: Property at Flat 2/1, 11 Wellshot Road, Glasgow, G32 7XL (“the Property”)

Parties:

Mr Greg Bremner, 1V Thorter Loan, Dundee, DD1 3AW (“the Applicant”)

Mr James McQuarrie, Flat 2/1, 11 Wellshot Road, Glasgow, G32 7XL (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the applicant against the respondent for the property.
2. The application contained:-

- a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the rent statement
 - letters to tenant regarding payment of rent
3. The Applicants' agent Mrs Bruce from D J Alexander appeared on behalf of the Applicant. Ms Reid, from D J Alexander was observing. The Respondent also attended.
 4. There had been a case management discussion on 11 May 2022. The respondent attended that case management discussion. Reference is made to that case management discussion note and the written representations made by the respondent. The tribunal had noted that there did not appear to be a lot of matters in dispute between the parties, however each party had matters relevant to the question of reasonableness, and the tribunal had advised that it wished to see supporting evidence in relation to the matters raised by both parties. The tribunal therefore fixed a hearing and issued a direction on the matters that they wished to see further evidence regarding.
 5. On 19 May 2022 the applicant's agent submitted an email responding to the direction. There was no written response from the respondent.

Discussion

6. The Applicant's agent invited the tribunal to grant the order for eviction. She confirmed that the circumstances affecting the landlord (as set out in the CMD note) were still outstanding. She submitted that the issues affecting the landlord had now increased in that, his mother had now been admitted to hospital and was waiting to be placed into residential care, he would have to contribute to the cost of her care, he could no longer afford his rent in Dundee, and he wanted to be in Glasgow to see his mother more easily.
7. She advised that current arrears were outstanding but had reduced to £2618.76p.

8. Mr McQuarrie had previously advised in summary as follows:
 - a. That the landlord had been a very good and reasonable landlord
 - b. That he had not applied for universal credit until July 2020 as he had been grieving after the death of his son
 - c. He had been in receipt of universal credit since July 2020, but he had been ill, and had numerous hospital appointments to go to and he had had to use the benefit money to get to these appointments
 - d. He admitted the debt
 - e. He had limited means being on benefits
 - f. He had not been able to get benefits advice and when he had asked the DWP if he could have any help with travelling costs he was told that there was no help available.
 - g. He advised that he did not know that he could apply for loans or grants to help with rent arrears over the covid period.
 - h. He advised that he had contacted CAB, but they had not got back in touch with him.
 - i. He struggled with mental health and anxiety and struggled to seek help at times. He had hardly left the house in the last two years.
 - j. He had lived in the flat for 5 years (and in in the same block for 6 years before that).
 - k. He had applied for housing with two housing associations.
 - l. He did not dispute the rent arrears.
 - m. He took responsibility for his failure to pay rent.
 - n. He advised that he wished to oppose an order for eviction being granted against him.

9. He advised that he had not submitted any information as he had not been well after falling and breaking his collar bone since the last hearing. He had been trying to find alternative accommodation and had contacted Shelter and Shettleston Housing Association. He advised that he had been told that he would not be able to get assistance until he had been evicted. He advised that he accepted that he may be evicted, he would struggle as he had nowhere to go, and he could not afford to move his belongings. If he were to be evicted some extra time to find a house and move would be helpful to him.

10. At the original CMD Mrs Blackwood advised that the landlord did not dispute the matters set out in Mr McQuarrie's letter, however given his circumstances he required recovery of the property. Further in responding to the direction Mrs Bruce advised that the applicant has only one rental property, and this was his home, before he had left to work overseas. The property had been let to the respondent since 2014. He requires to the property to live in as he has no other alternative place to live. He has not been working since he returned from overseas and he cannot afford the arrears. He has been living of his savings and rental income while he has been retraining. He is renting a flat in Dundee for £950 per month. He is also paying a mortgage on the property. He needs to return to Glasgow to be close to his mother and to find new employment. He is facing additional outlays to pay for his mother's residential care.

Findings in Fact

11. The Tribunal found the following facts established:-

- a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 20 February 2020.
- b. There had been an earlier tenancy between the parties from around 2014.
- c. Clause 8 of the Tenancy Agreement provides that the rent for the property is £350 per calendar month. It is payable in advance and due on the 20th of each month.
- d. There was a notice to leave addressed to the Respondent. It contained information for the Respondents as to why an eviction order was sought. It was dated 15 June 2021. It confirmed that proceedings would not be brought until 20 December 2022.
- e. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
- f. That rent arrears had been outstanding since June 2020 and were £2775 on that date.
- g. There appeared to be rent arrears outstanding at the date of the application was made, which totalled £3475 a sum more than one month's rental due under the tenancy.
- h. There appeared to be rent arrears outstanding at 6 July 2022 totalling £2618.76, a sum more than one month's rental due under the tenancy.
- i. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.

- j. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

12. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
13. The ground which the Applicant seeks eviction under is ground 12 rent arrears. Sub paragraph 1 states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. Sub paragraph 2 provides that the Tribunal must find that the ground named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
14. The tribunal finds that there are rent arrears on the account which were in existence for more than three months when the notice to leave was served. There are still rent arrears due. The arrears have been decreasing but a sum of more than one month's rent is still outstanding. We do not believe that there has been a delay or failure of the payment of relevant benefits which has caused the arrears. We find the ground established.
15. We must now consider whether it would be reasonable to grant the order. We would note that both parties had compelling reasons as to why it would be reasonable to find with them. However, we consider that the balance falls in favour of the applicant: this is his only property; it was his home; and he only rented it out while he was working away. He now requires it to reside in. He also appears to be financially disadvantaged by having to rent a property for himself. He needs to move back to Glasgow to spend time with his mother who is unwell and is moving to residential care.

16. We have a good deal of sympathy with the respondent. His circumstances are concerning. We also note that the applicant did not dispute anything that the respondent was saying. However as the landlord is a private individual who seeks the return of his property in order that he can live in it, we consider that it is reasonable to grant the order for eviction. We do note that Mr McQuarrie thought it would assist him having some extra time to allow him to move, and we accept that this may be correct and seems to be a reasonable request.

17. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent we consider that the terms of ground 12 met, and that it would be reasonable to grant an order for possession under Schedule 3 Ground 12 - rent arrears. Having regard to the circumstances affecting the Respondent we agree to delay the implementation of the order for eviction by one additional month to give the Respondent some additional time to resolve his housing situation.

Decision

18. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of 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.

M. Barbour

06/07/2022

Legal Member/Chair

Date