



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/22/0081

Re: Property at 13 Longmeadow, Johnstone, PA5 8PU (“the Property”)

Parties:

Mr Adeel Ahmad, 201 Bromford Road, Birmingham, B36 8HA (“the Applicant”)

Mrs Laura Lupke and Garreth Alexander, 13 Longmeadow, Johnstone, PA5 8PU (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member) and Robert Buchan (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the tenant in respect of the Property.

Background:

- 1. This is an application for an eviction order in respect of the Property on the grounds of rent arrears. The Property is let on a private residential tenancy agreement which is dated 23rd April 2019 and the tenancy commenced on that date. The monthly rent due in terms of the tenancy agreement is £450.**
- 2. The Applicant is seeking recovery of the Property under Ground 12, Part 3, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”): that the Respondent has been in rent arrears for three or more consecutive months.**
- 3. A case management discussion had been held on 23rd March 2022. Determination of the application was continued to allow the Respondent,**

Ms Lupke, to lead evidence to assist the tribunal in determining whether or not it is reasonable to issue the order of eviction.

- 4. At the case management discussion it was common ground between the parties that there were rent arrears of £5,901.59.**
- 5. On 23rd March 2022, there had been a case management discussion with regard to an application for a payment award as a consequence of the rent arrears and it was granted against Mrs Lupke. It was accepted that Mr Alexander, son of Mrs Lupke, had left the Property in Spring/Summer 2021 and that his whereabouts were unknown.**

The Hearing

- 6. The Hearing was conducted by audio conference. The Applicant was not present and was represented by Ms Kellie Deans of Penny Lane Homes. Mrs Lupke was present. Mr Alexander was not present.**
- 7. Ms Deans said that the current level of rent arrears was £7,251.59 and that no payment towards rent or rent arrears had been received since the case management discussion.**
- 8. Mrs Lupke said that she had been unable to work because she had injured her hand and that she had only been able to restart work three weeks prior to the Hearing. She said she would be able to pay the sum of £300 to the Respondent's agents on 10th June 2022.**
- 9. Mrs Lupke said that she did not dispute that the level of rent arrears was £7,251.59.**
- 10. Mrs Lupke said that she works for an agency as a care assistant on a zero hours contract and could never anticipate how much she would earn although she said that, in the current week, she had four shifts.**
- 11. Mrs Lupke said that she had tried to get financial assistance from various agencies but had been unsuccessful. She said that, after the payment she makes on 10th June 2022, she would hope to pay more in the coming weeks. She conceded that the payment of £300 would not cover one month's rental payment.**
- 12. Mrs Lupke accepted that, at the case management discussion, she had said that she would make a payment towards the arrears of rent but had been unable to do so because of the financial situation in which she found herself. She said that she hoped to make payments in the future.**
- 13. Mrs Lupke said that she had sought help from an adviser in Renfrewshire Council and had been told that it is likely that, if she were evicted, she would not get an offer of a tenancy from the Council.**

14. Mrs Lupke asked the tribunal to consider not granting the order to give her the opportunity to bring the rental payments up to date.

15. Ms Deans said that Mrs Lupke last paid rent in April 2021 and that the Landlord had a further payment from Universal Credit in November 2021. She said that the Landlord's business is letting properties and that he has not been able to get a return on his investment for some considerable time. She said that, in the circumstances, it would be reasonable for the order of eviction to be granted.

16. Documents before Tribunal

- (i) Private residential tenancy agreement dated 23rd April 2019.**
- (ii) Copy Notice to Leave dated 6th August 2021.**
- (iii) Copy Section 11 intimation to local authority dated 6th August 2021.**
- (iv) Copies of pre- action protocol letters to the Respondents.**
- (v) Rent Statement.**

17. The Law

Section 51 of the 2016 Act:

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 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.

Ground 12, Part 3 of Schedule 3 of the 2016 Act

Rent arrears

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.

Schedule 1 of the Coronavirus (Scotland) Act 2020

1 (1) *The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

(2) *Section 51 (2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

(3) *Schedule 3 (eviction grounds) has effect as if—*

(h) in paragraph 10 (2) (not occupying let property)—

(i) in the opening words, for the word "must" there were substituted "may",

(ii) after paragraph (a), the word "and" were repealed,

(iii) after paragraph (b) there were inserted " , and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

18. Findings in Fact

(i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 23rd April 2019.

(ii) The tenancy commenced on 23^r April 2019.

(iii) The monthly rent due under the private residential tenancy is £450.

(iv) The rent arrears currently due are £7,251.59

19. Finding in Fact and Law

The Respondent has been in rent arrears for three or more consecutive months.

Reasons

20. The tribunal noted the terms of the Notice to Leave which was dated 6th August 2021 and which stated that proceedings would not commence prior to 13th February 2022. The application to the Tribunal is dated 14th

February 2022. The tribunal was satisfied that the appropriate notice had been given to the local authority under Section 11 of the Homelessness Etc (Scotland) Act 2003.

21. The question of whether or not the Respondent was in rent arrears of more than three consecutive months was not in dispute. Mrs Lupke accepted at the case management discussion that the level of rent arrears was £5,901.59 and that, at the date of the Hearing, was £7,251.59. The last payment towards rent had been in November 2021. Since the monthly rent in terms of the tenancy was £450, the tribunal found that the threshold of Ground 12 had been met.
22. The tribunal noted that the Applicant had provided information to the Respondent when arrears of rent had accrued and that he had followed the appropriate pre- action requirements. Appropriate information had been provided and the tribunal noted that Mrs Lupke had not been able to obtain financial assistance.
23. Mrs Lupke provided no evidence that the inability to pay rent had been due to any issue regarding a delay or failure of a state benefit being paid.
24. The tribunal noted the circumstances of Mrs Lupke. She had no certainty with regard to income because of the fact that she has a zero hours employment contract. She offered to make a payment of £300 on 10th June 2022 but the tribunal considered it significant that she had made no payment of rent for over a year (albeit that there had been a payment from Universal Credit in November 2021), that no payment of rent or arrears of rent had been made since the case management discussion and that she had no substantive plan to pay the rent and arrears other than she hoped to make payments.
25. The tribunal noted the position of the Applicant. He is in the business of letting properties and, in respect of the property which is the subject of the application, is owed £7,251.59 by the Respondent.
26. In considering whether or not it is reasonable to grant an order of eviction, the tribunal had regard to the respective positions of the parties. It had sympathy for Mrs Lupke but, on balance, considered that

it was reasonable for the Applicant to recover the Property so that he could get a financial return from it. In coming to its determination, the tribunal had regard to the level of arrears, that no payment in respect of rent or reduction of the arrears had been made and that there was no credible plan of the Respondent to do so in the future.

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.

Martin McAllister

Legal Member

Date: 07/06/2022