



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/0798

Re: Property at 19 Malcom Road, Banff, AB45 1BU (“the Property”)

Parties:

Mr Robert Michael Ibbotson, c/o Jeannete Hoather, East Rothen Croft, Cornhill, Banff, AB45 3PB (“the Applicant”)

Mrs Fiona McLeod, Mr Kenneth McLeod, 19 Malcolm Road, Banff, AB45 1BU (“the Respondent”)

Tribunal Members:

Yvonne McKenna (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 it was reasonable to grant an Order for Eviction under Ground 12 of Schedule 3 to the 2016 Act

Background

1. By application dated 15 March 2022 the Applicant applied for an order for eviction and possession of the Property on the basis of Grounds 11 and 12 of Schedule 3 to the 2016 Act.
2. The papers before the tribunal comprised; -
 - Private Residential Tenancy Agreement (PRT) dated 1 July 2019 with a start date of 1 July 2019
 - Notices to Leave dated 9 September 2021
 - Post Office proof of delivery dated 10 September 2021 of the Notices to Leave from Royal Mail

- Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeenshire Council
 - Rent Statement covering the period 1 August 2020 to 1 March 2022 showing arrears of rent to be £4400.
 - Order for Payment granted by the Tribunal on 22 December 2021 against the Respondent in favour of the Applicant for the sum of £2684
 - Copy Order of the Court of Protection in England appointing Mrs Jeanette Hoather as the Applicant's deputy dated 1 September 2010
 - Pre-application Protocol Letters sent by e-mail to the Respondent dated 22nd September 2021
3. By decision dated 20 April 2022, a Convenor of the HPC having delegated power for the purpose referred the application to the tribunal. A letter of intimation dated 14 May 2022 and Notice of the Case Management Discussion (CMD) to be held on 24 June 2022 at 2pm by teleconference call together with the case papers was served on the Respondent by Sheriff Officers on 17 May 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificates of Citation of that date.
 4. No written representations were received from the Respondent in advance of the CMD.

The Case Management Discussion (CMD) 24 June 2022

5. The application called for a CMD at 2pm on 24 June 2022 by teleconference. The Applicant's Representative was present namely Mr Alan Duffil, Stewart and Watson solicitors. Also in attendance was Mrs Hoather. The Respondent did not participate.
6. The tribunal explained the purpose of a CMD in terms of Rule 17 of the Rules.
7. This application was conjoined with an action for payment in respect of rent outstanding due by the Respondent under Tribunal reference FTS/HPC/CV/22/1250.
8. Mr Duffil explained that the rent outstanding as at 24 June 2022 was in excess of £5000 and that the Respondent had not paid any rent since October 2021. He sought an eviction order today.
9. A letter complying with the pre-action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 was sent by the Applicant's Representative to the Respondent on 22 September 2021.

10. Mr Duffil said that the Respondent is in gainful employment. Mrs McLeod works for Banffshire Partnership and Mr McLeod works for a local farmer.
11. There has been no contact with the Respondent by the Applicant since the paperwork was served. There is already an earnings arrestment in place regarding the previous Order for Payment which was also for arrears of rent. All indications are that the Respondent is still living in the Property. The couple do not have any children.

Findings in Fact

12. The Applicant is the Landlord of the Property, and the Respondent is the tenant in terms of a PRT entered into between the parties dated 1 July 2019.
13. The rent stipulated in the PRT was £400 per month.
14. The Respondent has fallen into arrears of rent.
15. At the time that the Notices to Leave were served the rent arrears stood at £2000.
16. As at the date of the application the rent arrears had risen to £4400.
17. As at the date of the hearing on 24 June 2022 the rent arrears outstanding remain well over three months.
18. The Respondent is in rent arrears over three consecutive months
19. Notices to Leave were dated 9 September 2021 and were sent out by Post Office Track and Trace.
20. The Notices were delivered on 10 September 2021 and signed for by the Respondent.
21. The Notices intimated that the Landlord was seeking recovery and possession of the Property on the basis that there were rent arrears over 3 months consecutively.
22. The Notice period specified in the Notices expired on 13 March 2022.
23. The application was lodged with the tribunal on 15 March 2022.
24. A Notice in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 had been intimated to the local authority.
25. It is reasonable to grant the order.

Reasons for Decision

26. In considering the reasonableness of the Order being granted the tribunal enquired about the Respondent's position. The tribunal takes account of the fact that the Respondent couple are both in employment and have no children. The Respondent has not engaged in these proceedings. The Respondent is choosing not to pay rent and has not made any payments of rent since October 2021, 8 months ago. The Respondent is not understood to have rent arrears due to benefit difficulties. The Applicant already has an Order from the Tribunal for payment dated 22 December 2021 for earlier rent arrears and these are being recovered by earnings arrestment. The rent arrears are significant.
27. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, and in the

absence of the Respondent it was able to determine the application at the CMD.

28. The tribunal noted that when the Notices to Leave were served on the Respondent that the Applicant sought eviction on Grounds 11 and 12 of Schedule 3 to the 2016 Act.

29. Grounds 11 of Schedule 3 to the 2016 Act states;-

Breach of tenancy agreement

11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

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

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

It is clear that this does not apply to this case as the requirement to pay rent is specifically excluded from Ground 11.

30. Ground 12 of Schedule 3 to the 2016 Act states ;

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,

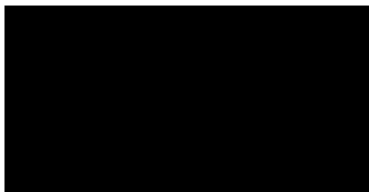
(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(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.

31. The tribunal accepted the information in the file and as provided by Mr Duffil .and accepted his submissions in relation to reasonableness. It is clear that Ground 12 applies and the tribunal was satisfied that in the circumstances it was reasonable to grant the order for eviction.

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.



Legal Member/Chair

24 June 2022

Date