



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/22/1051

Re: Property at 78 Double Hedges Park, Edinburgh, EH16 6YN (“the Property”)

Parties:

Kathleen Brydon Richardson, 59 Buckstone Loan, Edinburgh, EH10 6UJ (“the Applicant”)

Mrs Margaret Harrop, 78 Double Hedges Park, Edinburgh, EH16 6YN (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (Ordinary Member)

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. On 8th April 2022, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 31st May 2022, the application was accepted for determination by the Tribunal.
3. Written representations were submitted by both parties.
4. A case management discussion was held on 12th August 2022. It was held by audio conferencing.

The case management discussion

5. Mr David Gray of Messrs Gilson Gray, solicitors, represented the Applicant.
6. The Respondent was present.
7. The Legal Member explained the purpose of a case management discussion. Ms Gray invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 12, Part 3 of Schedule 3 of the 2016 Act have been met.

8. Findings in Fact

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 12th April 2019.
- (ii) The tenancy commenced on 12th April 2019.
- (iii) The monthly rent currently due under the private residential tenancy is £665.
- (iv) The rent arrears due as at 28th July 2022 are £10,915.

9. Finding in Fact and Law

The Respondent is in rent arrears for three or more consecutive months as at the date of the case management discussion.

10. Documents before Tribunal

- (i) Private residential tenancy agreement dated 10th and 12th April 2022.
- (ii) Copy Notice to Leave dated 27th August 2021.
- (iii) Copy Section 11 intimation to local authority dated 8th April 2022.
- (iv) Email from Applicant's agents to Respondent dated 7th January 2022 in which she is advised of agencies who might assist tenants requiring support or advice with regard to difficulties in paying rent.
- (v) Rent statement.
- (vi) Written representations from both parties.

11. 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 as continued by the Coronavirus (Extension and Expiry) (Scotland) Act 2021

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."

Discussion

12. Mr Gray said that no payment of rent had been made since 25th October 2021. He said that the Respondent had paid nothing since 28th July 2022 which was the date the rent statement had been brought down to. He said that the rent statement showed the level of rent arrears to be £10,915. Mr Gray said that

the Applicant had obtained a Payment Order from the Tribunal and that, in connection with that, a conjoined arrestment order had been obtained from Edinburgh Sheriff Court and that the first payment had come through a few days prior to the Hearing.

13. The Respondent said that she accepted the level of rent arrears indicated by the Applicant.
14. The Applicant's written representations state that the rent is due to be paid on the 1st day of each month by standing order and that the Respondent would be aware of her contractual obligations in this regard. The representations state that the position where there are ever- increasing rent arrears is untenable.
15. In reference to the Respondent's representations of 24th July 2022, the Applicant's representations state that they do not include earlier statements made by the Respondent that non- payment of rent was due to a number of issues such as a car repair bill, money lent to her daughter which was not repaid, a Council Tax bill, a gambling addiction and retaining money for a new place to live.
16. The Respondent's representations dated 24th July 2022 state that she had not been able to pay rent because of the coronavirus epidemic, she had sustained "a prolonged period of bad luck", loss of family members, depression and anxiety. The representations disclose that the Respondent was and is in employment. They state that a reason the Respondent has not paid rent is that she had no certainty that she would be allowed to stay in the Property. The representations state that the Respondent is seeking a period of a few months to allow her to demonstrate that she could pay the rent and deal with the arrears.
17. The Respondent's representations dated 4th August 2022 state that for two years she had no difficulty paying rent and that, after the first year of the Covid 19 pandemic, her mental and physical health deteriorated for which she could get no substantive assistance because of the pressure on NHS services. The representations state that if the Respondent is allowed to stay in the Property, she would be better able to pay the arrears. They state that the Respondent does not consider that the letting agent were supportive of her and, in particular, to her proposal to pay the arrears at £135 per month. The representations state that the Respondent thought that, as a result of the previous Tribunal case and that arrestment, the rent and arrears would be deducted from her salary from June 2022 and that she does not know why this has not been done.
18. In answer to a question put to her, the Respondent said that she no longer had the money which she thought would be deducted from her salary for rent and arrears from June 2022.
19. The Respondent was referred to the email which the Respondent had sent her on 7th January 2022 as part of a landlord's requirement to comply with the Rent-Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

She said that she had sought no assistance from any agency because she was embarrassed and ashamed.

20. The Respondent said that she had sought help in relation to her gambling but had not followed the advice she had been given.
21. The Respondent said that she had little to add to her written representations other than say that she has mental health problems and was not thinking clearly and suffered depression which led to her gambling. She said that had the letting agent set up a direct debit, the money could have been taken for rent rather than been available for her to gamble.
22. Mr Gray said that it was for the Respondent to arrange to pay the rent and that a direct debit would have been capable of being cancelled by the Respondent.
23. The Respondent said that she had nothing to add to the representations which she had made and had no evidence which she would want to produce at a Hearing.

Reasons for Decision

24. The tribunal saw no reason for determination of the application to be continued to a Hearing. There was no dispute between the parties in relation to grounds for eviction. There was more than three months' rent lawfully due.
25. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003 and that the Applicant had followed the requirements of the Rent- Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
26. The Respondent had not argued that arrears of rent had been caused by any issues relating to delay in benefits being paid.
27. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.
28. The tribunal had sympathy with the Respondent's position but could not overlook the fact that she had last made a payment towards rent in October 2021 and that, even if she had been paying the rent now (which she is not), it would take more than seven years for the arrears to be paid at her suggested rate of £135 per month. The current rent arrears are approaching £11,000.
29. The tribunal also noted that the Respondent had sought no assistance from agencies who may have been able to help her.

30. The tribunal considered that it was reasonable for a landlord to expect that a return is received on a property and that rent be paid. In the particular circumstances of this application the tribunal, having considered the position of both parties, determined that it is reasonable for the Applicant to recover the Property.

Decision

31. The tribunal determined that the application be granted and that an eviction order be made.

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
12th August 2022**