



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/22/1469

Re: Property at 20 Rowett South Avenue, Aberdeen, AB21 9GL (“the Property”)

Parties:

Castle Rock Edinvar in association with Places for People Scotland Limited, 1 Hay avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Craig Chrystal, 20 Rowett South Avenue, Aberdeen, AB21 9GL (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has been in rent arrears for three or more consecutive months and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

The decision of the Tribunal was unanimous.

Background

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 18th May 2022 along with a related payment order application (FTS/HPC/CV/221469). Both applications were accepted by the Tribunal on 1st June 2022 and a case management discussion was fixed for both applications on 12th August 2022 at 10am.

Case Management Discussions

2. At the case management discussion on 12th August 2022 the Applicant was represented by Mr Kenneth Caldwell solicitor of Patten and Prentice solicitors. There was no appearance by or on behalf of the Respondent and the Tribunal members noted that both applications and supporting papers, together with the date of the case management discussion had been intimated to the Respondent by Sheriff Officers placing these through the letterbox at the property on 6th July 2022. The case management discussion proceeded in the absence of the Respondent as fair notice of the application and date of the discussion had been sent to him.

3. At the case management discussion on 12th August 2022, the Tribunal had sight of both applications, papers apart for both applications, a tenancy agreement, a rent statement, a Notice to Leave, an execution of service for the notice, a pre action protocol letter, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email acknowledging this notice and an up-to-date rent statement along with a request to increase the sum being requested in the payment order application.

4. Mr Caldwell advised that he had contacted the Tribunal by email in advance of the case management discussion to seek a postponement to a later date. The position was that the Respondent had contacted Mr Caldwell's clients advising that he wished to retain the tenancy, he worked offshore and could pay the rent going forward together with £200 per month towards the arrears and this arrangement appeared to have been accepted by the landlords. A payment of £300 had already been made towards the rent arrears by the Respondent. Mr Caldwell requested a continuation of the case management discussion to ascertain if the agreed arrangement continued. The Tribunal considered that it was appropriate to continue the case management discussion to a later date for this reason. The Tribunal issued a Direction to the Applicant's representative to advise the Tribunal if the Applications did not require to proceed at least 5 days before the case management discussion.

5. The case management discussion for both applications was continued until 11th November 2022 at 10am. On that date Mr Caldwell again attended to represent the Applicants and there was no appearance by or on behalf of the Respondent. Mr Caldwell had lodged with the Tribunal a series of emails exchanges between himself and the Respondent, one of which included the date of the case management discussion and the dial in codes for the teleconference. It was clear that the Respondent was aware of the case management discussion and the Tribunal was satisfied that it was appropriate to proceed in his absence given that he had received notice of the date of the discussion.

6. At this case management discussion, the Tribunal had sight of all the papers it had seen previously together with emails sent to the Tribunal by Mr Caldwell on 3rd and 4th November 2022 and responses to these sent by the Respondent.

7. Mr Caldwell confirmed to the Tribunal that the tenancy had commenced in January 2020 and the monthly rent payable was initially £450, which was increased later in the tenancy to £467.55 per month. A Notice to Leave had been served in June 2021 when rent arrears at the property had reached £5,690. The eviction application had been made in May 2022 when the arrears had continued to increase, no rent having been

paid during the period since the Notice to Leave was served. After the first case management discussion on 12th August 2022 there had been no payments made towards the rent arrears as agreed by the Respondent. Mr Caldwell advised that the Respondent had inferred in emails that payments had been made but when asked to provide proof he had not done so. The Applicants had not changed any of the banking details required to make payment and the Respondent was aware of how to make payment. No payments had been made in 2022 other than £300 towards the rent arrears paid in July 2022. The current rent arrears amounted to over two years' rent due in terms of the tenancy agreement and as of November 2022 stood at £13,145.30.

8. Mr Caldwell advised that as at the start of the tenancy the Respondent was working as a labourer and was now thought to be working offshore. There was some suggestion that a relative of the Respondent might live at the property, but this was not confirmed, and the Respondent was the only tenant on the tenancy agreement. The Respondent it was said, had engaged in sending what were described as "belligerent" e mails and in one dated 3rd November 2022 had suggested that "nothing could be done until he came back on 18th". Mr Caldwell was instructed to seek the eviction order as the Respondent had failed to take up the opportunity offered of the payment plan for the arears and had not produced any vouching for payments he said he had made towards the arrears.

9. The Tribunal considered the Notice to Leave, the execution of service of the Notice by Sheriff Officer, the S11 Notice which had been intimated to the local authority and noted that these appeared to be in proper form and that the correct notice period had been used. The Tribunal also noted that it had sight of a letter sent to the Respondent in terms of the Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020.

10. The Tribunal considered it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The Applicants entered into a private residential tenancy at the property with the Respondent from 10th January 2020.

12. The monthly rent payable in terms of the tenancy agreement was initially £450 and this was increased to £467.55 per month in from June 2022.

13. As at June 2021 rent arrears in the sum of £5,690 had accrued and a Notice to Leave in proper form giving the appropriate notice period was served on the Respondent.

14. By July 2022 the rent arrears had increased further, and no further rent payments had been made by the Respondent.

15. The Respondent contacted the Applicant's agents in July 2022 offering to pay the arrears at £200 per month and indicating that he wished to retain the tenancy.

16. The Applicant's agents agreed to this arrangement regarding the payment of the rent arrears.

17. The Respondent paid the sum of £300 towards rent arrears in July 2022.

18. No further rent payments have been received from the Respondent since that date and the arrears currently stand at £13,145.30.

19. The Respondent has been and continues to be in rent arrears for a period exceeding three consecutive months of the tenancy.

20. The Respondent has not adhered to the payment plan agreed in respect of the rent arrears in July 2022.

21. The Respondent was in employment at the start of the tenancy and is now working offshore.

22. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to Aberdeen City Council before this application was lodged with the Tribunal.

23. A letter in terms of the terms of the Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020 was sent to the Respondent by the Applicant's solicitor on 18th May 2022.

Reasons for Decision

24. The Tribunal was satisfied that the eviction ground was made out and noted that the rent arrears in this application are substantial. The Respondent had not adhered to a payment plan for the arrears which he had suggested. The Notice to Leave and Section 11 Notice were in proper form and the correct notice period had been given in terms of the Notice to Leave. Having considered that the eviction ground was made out, the Tribunal required to consider whether it was reasonable to grant the order. Given the level of arrears and the failure of the payment plan suggested by the Respondent the Tribunal was satisfied that it was reasonable to grant the order. The tribunal further noted that the Respondent had not attended the Tribunal or made representations to suggest that it would be unreasonable to grant an eviction order.

Decision

The Tribunal granted an eviction order against the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has been in rent arrears for three or more consecutive months and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

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

11.11.22

Date