



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/22/1560

Re: Property at 2 Sanquhar Mains, Forres, IV36 2RR (“the Property”)

Parties:

Mr Peter Bruce, Sanquhar Mains Farm, Forres, IV36 2RR (“the Applicant”)

Patricia Fenton, 2 Sanquhar Mains, Forres, IV36 2RR (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

On 23rd May 2022 the Applicant lodged an application with the Tribunal in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the Application were:

1. Copy Tenancy Agreement with commencement date 2nd January 2021 with rent of £400 per month
2. Notice to Leave dated 17th November 2021 to leave on 20th May 2022
3. Proof of Service of Notice to Leave

4. Four Pre Action Requirement Letters dated 21st September 2021, 13th December 2021, 2nd February 2022 and 18th March 2022
5. Section 11 Notice

The papers were served on the Respondents by Sheriff Officer on 9th August 2022.

On 21st September 2022 the Applicant's solicitor sent two letters to the Tribunal which had been sent from the Respondent to the Applicant and a letter from his firm to the Respondent. The letters said that the Respondent was seeking alternative accommodation.

Case Management Discussion

A Case Management Discussion ("CMD") took place by teleconference on 22nd September 2022.

The Applicant was represented by Mr Swarbrick of Swarbrick Law. The Respondent did not dial in and was not represented.

The Tribunal explained the purposes of a CMD in terms of Rule 17 and asked Mr Swarbrick to address them.

Mr Swarbrick asked for the Tribunal to allow the documents he had lodged the previous day to be allowed although late. He had thought when he was preparing for the CMD that they might be relevant. The Tribunal allowed them to be received.

Mr Swarbrick confirmed that he was seeking an order for eviction in terms of the application. The tenancy had commenced on 2nd January 2021 with a monthly rent of £400. Arrears began to accrue in April 2021. The first Pre Action Requirement letter was sent on 21st September 2021. The Notice to Leave dated 17th November 2021 was served. At that date the arrears were £2190, being five months' arrears.

Some payments were received in July, August and October 2021, but nothing had been received since then. When the application was lodged the arrears were £4950, and as at today they stood at £6190.

The Tribunal were satisfied that the ground had been met.

Mr Swarbrick addressed reasonableness. He said that the letters sent by the Respondent showed that the property was too big for her and she intended to move out. She also accepted in the letters that it was not reasonable for her not to pay rent.

The Tribunal asked if any benefits had been applied for. Mr Swarbrick said there had been a discussion with a housing officer who indicated benefits might be applied for, but there had been no confirmation of that, and no payment had been received from the DWP by the Applicant.

The Tribunal noted that the respondent referred to “ill health” in her letters. Mr Swarbrick said that he did not have any knowledge of what that ill health might be.

The Tribunal asked what size the property was. Mr Swarbrick said he assumed there was more than one bedroom as there had been a suspicion at some point that the Respondent had another person living with her without the Applicant's permission. She was a single lady as far as he knew.

Findings In Fact

1. The parties entered in to a Private Residential Tenancy commencing on 20th May 2021;
2. The rent was £400 per month;
3. Notice to Leave was served on the Respondent correctly and timeously;
4. The Pre Action Requirements had been complied with;
5. At the date the Notice to Leave was served the arrears were £2190;
6. At today's date the arrears are £6190;
7. No payment towards rent has been made since October 2021;
8. No benefits are paid directly to the Applicant;
9. The Respondent has indicated that she is intending to leave.

Reasons For Decision

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 2 and Schedule 1, Paragraph 1 of the Coronavirus (Scotland) Act 2020 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

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—

(a)in paragraph 1(2) (landlord intends to sell)—

(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.”,

(b)in paragraph 2(2) (property to be sold by lender)—

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

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

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

(c)in paragraph 3(2) (landlord intends to refurbish)—

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

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

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

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for the word “must” there were substituted “may”,

(ii)the words from “the landlord” to “3 months” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for the word “must” there were substituted “may”,

(ii)the words from “the landlord” to “home” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

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

(ii)after paragraph (b) the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

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

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “may”,

(ii)for paragraph (c) there were substituted—

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

(iii)sub-paragraph (3) were repealed,

(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “sub-paragraph (2)”,

(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.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(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.”.

The Tribunal has to consider all the circumstances relevant when deciding on reasonableness. In this case the Respondent had not attended the CMD to put forward any opposition. Her letters indicated that she intended to leave. No payment had been received towards rent in over a year. The Respondent is a single woman. The Tribunal, having considered these factors, decided that it was reasonable to grant the 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.

A J Kelly

22nd September 2022

Legal Member/Chair

Date