



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/22/2279

Re: Property at 4 Knowe Road, Chryston, Glasgow, G69 9BQ (“the Property”)

Parties:

Mr Steven Taylor, Mrs Donna Taylor, 3 Barcaldine Avenue, Chryston, Glasgow, G69 9NT (“the Applicants”)

Mr Marc Sutherland, 4 Knowe Road, Chryston, Glasgow, G69 9BQ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 11th July 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought an eviction order in relation to the Property against the Respondent, and provided with their application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, rent arrears statement, and various pre-action correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 31st August 2022, and the Tribunal was provided with the execution of service.

Shortly prior to the Case Management Discussion, the Applicants provided an updated rent arrears statement disclosing arrears to 29th September 2022 of £7,420.00.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 26th October 2022 by Tele-Conference. The Applicants did not participate, but were represented by Ms Cooke, letting agent. The Respondent did not participate, nor was he represented. The Respondent had responded to this application by e-mail to the Tribunal of 18th October 2022. In that e-mail, the terms of which were somewhat self-contradictory, he appeared to accept the arrears of rent, indicated that he was seeking further advice, and explained that he had some mental health issues which he provided no further details about nor any evidence in relation thereto.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal noted that the notice to leave specified a date before which an application would not be submitted to the Tribunal for an eviction order of 27th May 2022. That date was incorrect, and should have been 25th May 2022. Ms Cooke invited the Tribunal to entertain the application in terms of section 52(4) of the *Private Housing (Tenancies) (Scotland) Act 2016* in circumstances where the incorrect date provided the tenant with two days more than was required. The Tribunal considered in all the circumstances that it was reasonable to do so and entertained the application.

Ms Cooke also confirmed that the e-mail address specified in the tenancy agreement was different to that subsequently used both for service of the notice to leave and in other correspondence with the Respondent. She explained that shortly after the commencement of the lease, the Respondent confirmed a change of his e-mail address to that subsequently used. The new address was also that used by the Respondent in his e-mail to the Tribunal of 18th October 2022 and also in correspondence with the Applicants' representative.

Miss Cooke confirmed that no further payments had been received from the Respondent since this application was lodged. Rent arrears at that time were £5,935.00, and as of today's date had risen to £7,915.00.

The Tribunal was invited by Ms Cooke with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Ms Cooke drew the Tribunal's attention to various letters and other attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears, and advising him about where he might obtain advice.

The notice to leave dated 25th April 2022 relied on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that rent arrears at that time amounted to £4,945.00, accumulated over approximately eleven months under the private residential tenancy agreement between the parties.

Rental of £495.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. The Respondent had been in arrears of rent for eleven months as at the date of the notice to leave, and he had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding 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.

The Tribunal was satisfied that ground 12 has been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondent has failed to respond or engage with the Applicants to agree a reasonable plan to make payments to the landlord.

Decision

In these circumstances, the Tribunal made an eviction order as sought in this application.

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.

N. Kinnear

26/10/2022

Legal Member/Chair

Date