



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/22/2735

Re: Property at 3 Muirfield Steading, Gullane, EH31 2EQ (“the Property”)

Parties:

Explorer Property Limited, Culter House, Coulter, Biggar, ML12 6PZ (“the Applicant”)

Mr Liam Allan, 3 Muirfield Steading, Gullane, EH31 2EQ (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Elaine Munroe (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

1. This is an application for recovery of the Property. The application is dated 5th August 2022. The Applicant is seeking recovery under Ground 12, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020. This ground states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions.

Preliminary Matters

2. The case management discussion was held by audio conference on 12th January 2022. Mrs Philippa Van Der Linde, director and shareholder of the Applicant was present. The Respondent was present. The Legal Member outlined the purpose of a case management discussion and the terms of Rule 17 of the Chamber Rules:

Case management discussion

17.— (1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision

3. Neither party had submitted written representations.

4. Prior to the case management discussion, the Applicant had submitted an updated rent statement showing the rent outstanding to be £3,145 with the calculation of rent due to 31st October 2022. Mrs Van Der Linde confirmed that this reflected the current level of rent arrears.
5. The Respondent said that he had no issue with the accuracy of the rent statement which had been submitted.
6. Mrs Van Der Linde confirmed that the Applicant was seeking an order of eviction on the ground that the Respondent has been in rent arrears for three or more consecutive months as evidenced by the rent statement which had been submitted. She confirmed that the current monthly rental was £775.
7. Parties acknowledged that there was no reason for a Hearing to be fixed and that the matter could be dealt with at the case management discussion.

Documents before the tribunal

- 8.1 Copy of the private residential tenancy agreement for the Property dated 23rd October 2019 showing the commencement of the tenancy to be 1st November 2019 and the monthly rent to be £700. The tenancy agreement showed the tenants to be the Respondent and Skye Ritchie.
- 8.2 Addendum to the private residential tenancy agreement dated 12th October 2021 showing Skye Ritchie's removal as tenant and the Respondent remaining as sole tenant.
- 8.3 Rent increase notice dated 13th September 2021 showing the rent being increased to £775 per month.
- 8.4 Copy rent statement from 30th October 2019 showing the rent outstanding on 31st October 2022 to be £3,145.
- 8.5 Notice to Leave dated 4th July 2022 and delivered by recorded delivery on the Respondent on 7th July 2022.
- 8.6 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 dated 5th August 2022.
- 8.7 Print of Title Sheet for ELN4775 (the Property).

Findings in Fact

9.1 The Applicant is the owner of the Property.

9.2 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 23rd October 2019.

9.3 Skye Ritchie was a tenant in terms of the Private Residential Tenancy Agreement until 12th October 2021.

9.4 The start date for the tenancy was 1st November 2019.

9.5 The initial monthly rent for the Property was £700 per month and the current rental is £775.

9.6 The Applicant gave the Respondent Notice to Leave which was served on him on 7th July 2022.

9.7 The Applicant has given notice to the local authority in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003.

9.8 The Respondent resides at the Property.

9.9 There are rent arrears of £3,145.

Findings in Fact and Law

10.1 The Private Residential Agreement dated 23rd October 2019 contains eviction grounds including Ground 12: "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

10.2 The Notice to Leave which was dated 5th July 2022 referred to Ground 12 which was being relied on by the Applicant as the reason for seeking recovery of the Property.

10.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 5th August 2022.

10.4 As at the date of the case management discussion, the Respondent is in rent arrears for three or more consecutive months.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

Section 51: 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 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.

(introduced by section 51)

Schedule 3, Part 12

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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and
(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

Evidence and Submissions

11. The tribunal had regard to the documentation which had been lodged by the Applicant.

12. The rent statements showed that there are arrears of rent amounting to £3,145 and that arrears of rent have continued for a period in excess of three months and started in 2019.

13. The Respondent did not dispute that the eviction ground was met.

14. Mrs Van Der Lind said that the Applicant company is owned by she and her husband. It owns three properties which were purchased to provide an investment and future pension provision for the owners of the company. She said that there is no loan secured over the Property.

15. Mrs Van Der Linde said that the Property was originally let to the Respondent and his partner from whom he has separated. She said that the Respondent appeared to get into difficulties in paying for the rent because he was relying on one rather than two sources of income. She said that it was her belief that the Respondent could not sustain the rent payments from his income alone.

16. Mrs Van Der Linde said that, when the covid crisis occurred, the Respondent had been able to apply to East Lothian Council for top up payments in addition to the payments of Universal Credit which were getting paid direct to the Applicant. She said that this meant that the level of arrears had been maintained and that the rent

had been met from a combination of the two sources of payment. She said that the last payment of rent which had been personally paid by the Respondent was in August 2021. She said that the current arrangements of Council top up payments would stop in March 2023. The Respondent said that he understood that another application could be made to the Council in March 2023.

17. The Respondent said that he receives Universal Credit and top up payments from East Lothian Council. He said that, on a monthly basis, £26 of his Universal Credit goes towards arrears of rent. He said that he had not been getting all the Universal Credit he had been entitled to and that an additional payment to arrears had been made in 2022. Mrs Van Der Linde accepted that the rent statement which she had submitted showed that the arrears of rent on 28th January 2022 showed rent arrears of £3,988 and that this had reduced to £3,145 on 31st October 2022.

18. Mrs Van Der Linde said that the current situation is that the level of arrears is remaining fairly static and that there is no inroad being made to the debt. She said that the continuation of the Council top up payment is not certain.

19. The Respondent said that he had fallen into arrears once his partner, the mother of his two children, had left the Property. He said that he got a job as a carer for a time but was not making enough to pay the rent and meet other financial commitments including travelling to see his children.

20. The Respondent candidly provided considerable information with regard to his health condition and the need for support. He said that his mother and grandmother live close to the Property and are able to provide him with some support. He said that his children are aged four and two and that they stay with him on alternate weekends.

21. The Respondent said that he had been trying to find alternative accommodation but had no success. He said that he will receive no assistance from the Council unless he is served with an order to remove from the Property. He said that, if he left of his own will, he would be considered to have made himself intentionally homeless.

22. The Respondent indicated that he appreciated the level of arrears of rent and he said that he would try to get a job so deal with them.

23. The Respondent said that the Property was too expensive for him and that he had been trying to find somewhere cheaper.

24. Mrs Van Der Linde said that the property is situated in one of the most expensive villages in East Lothian and she thought that the Respondent would be better moving to a cheaper area.

Discussion and Reasons

25. The tribunal had regard to the documentation which had been lodged by the Applicant.

26. The rent statements showed that there have been arrears of rent since 2019.

27. The Respondent did not dispute that the eviction ground was met because he accepted the level of rent arrears stated by the Applicant.

28. The documentation lodged by the Applicant evidenced that appropriate notice had been given to the Respondent and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

29. The tribunal considered if the requirements of Ground 12 were met. There clearly was arrears of more than three months and the Respondent had been in arrears since 2019.

30. In considering whether or not it is reasonable to grant the order of eviction sought by the Applicant, the tribunal had to carry out a balancing exercise after considering the respective positions of the parties.

31. The Applicant had not received payment of rent which it was contractually entitled to receive. Although the arrears of rent had reduced in the previous year, there seemed no certainty that this would continue in any substantive manner.

32. The Respondent had health issues and clearly required a home to enable him to have residential contact with his young children. He did, however concede that the Property was too expensive for him.

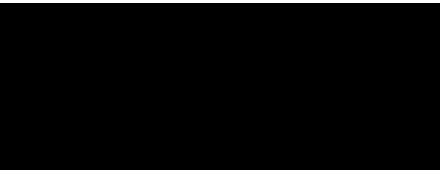
33. The tribunal was required to balance the Applicant's position against that of the Respondent. It accepted that the Applicant was and is suffering financially as a result of the non-payment of rent and was entitled to recover the Property.

34. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order of eviction be granted.

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 J. McAllister
Legal Member
12th January 2023**