



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/22/2935

Re: Property at 40 Drumdevan Road, Lochardil, Inverness, IV2 4DD (“the Property”)

Parties:

Mr Ian Hay, Mrs Anne Hay, 22 Plasmon Mill Court, Forres, IV36 1BN (“the Applicant”)

Mr David Skinner, Mrs Jeanette Skinner, 40 Drumdevan Road, Lochardil, Inverness, IV2 4DD (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Jane Heppenstall (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 should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was lodged by the Applicants' agent on 18 August 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application with the application and in an email from the Applicants' agent of 13 January 2023:
 - a. Tenancy rent statement from December 2020 to August 2022
 - b. Notices to leave dated 30 June 2022 for both Respondents
 - c. Executions of service for said notice from Sheriff Officers confirming service on 1 July 2022
 - d. S11 Notices with evidence of online transmission on 18 August 2022
 - e. PARS letters to the Respondents dated 15 December 2021 and 1 April 2022

- f. email from Respondents 1 July 2022
 - g. file note of conversation agent's secretary with Respondents 1 July 2022
 - h. letters to Respondents dated 2 August 2022 and 7 September 2022 re rent arrears and Universal Credit
 - i. updated rent statement to January 2023
3. On 30 November 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondents. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 4. No representations from the Respondents were received by the Tribunal.
 5. The case documents are referred to for their terms and held to be incorporated herein.

B: Case Management Discussion

1. The Applicants were represented at the CMD by their solicitor Mr Swarbrick. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD.
3. Mr Swarbrick explained that the Applicants are an elderly couple in their 80s, who moved into supported living accommodation in 2018. The Applicants require the funds from the property income for their retirement living expenses, in particular as their care needs increase. They rented the property to the Respondents on the understanding the Respondents would purchase this in due course. That did not happen. There is no written PRT as the elderly couple had not been familiar with the housing legislation. The rent agreed from the beginning was £600. Rent was initially paid but payments stopped in December 2020. The last contact received from the Respondents was in July 2022 and despite the promise of a payment being set up and Universal Credit paying rent on their behalf, no payments have been received. The Respondents had initially informed the Applicants in February 2022 that they had made a successful Universal Credit application. At that stage they stated Universal Credit would pay the rent and they would pay £250 per month towards the arrears. No payments followed. They again promised payments of £500 per month in July 2022 but no payments were forthcoming. The Respondents are a couple with no dependent children living at the property. They have not been in contact at all since July 2022 despite the solicitor's letters of 2 August 2022 and 7 September 2022 and the application papers having been served. The Applicants have been severely negatively impacted by the lack of income from the property towards their retirement finances for a period of now 25 months to the tune of £15,600 and urgently require to gain the property back.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 February 2018.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicants have title and interest to pursue the application.

5. The monthly rent, payable on the 1st day of the month in advance, was £600.
6. Rent arrears accrued as per the Rent Statement up to January 2023.
7. As at 20 January 2023 £15,600 are still outstanding. The last payment of rent from the tenant had been made in November 2020.
8. Universal Credit was applied for by the Respondents but no payments have reached the Applicants.
9. The Respondents has been in arrears of rent since December 2020 and thus for a period exceeding 3 months at the time the notice to leave was served and they have now been in rent arrears for 25 months
10. The Applicants had provided the Respondent with the opportunity to resolve the matter and the Respondents had offered payment of the arrears at £250 per month in February 2022 and at £500 per month in an email of 1 July 2022 but made no payments at all either towards the rent or the arrears.
11. The Respondents are a couple living at the property with no children living with them.
12. Notices to Leave were served on 1 July 2022 by Sheriff Officers on ground 12 of schedule 3 of the 2016 Act giving the required 28 days notice period.
13. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
14. The Applicants provided the required S 11 notices and proof of service of same on the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

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.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

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 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.

Grounds under Schedule 3 of the 2016 Act

Ground 12 Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

...

(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.

(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.

(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

2. The Respondents have not made any representations and did not attend the CMD. The Respondents had fair notice of the representations of the Applicants forming the reasons for the application and have not challenged these. As no representations were received from the Respondents by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the application, the notice to leave and updated rent statement. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondents were made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Mr Swarbrick on behalf of the Applicants.

4. In terms of S 54 of the Act a 28 day notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing at the full monthly rent amount over 25 months. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with the pre action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending the letters of 1 April 2022 and 15 December 2021 addressing the arrears and signposting the tenant to advice sources, fund sources and seeking proposals for a resolution. No payments have been received and the Respondents have not engaged with the Applicant to resolve the matter. Whilst they did on two occasions promise payments, no payments have been forthcoming for 25 months.

6 The Respondents had not provided any updates regarding their situation and had ignored all correspondence sent to them regarding rent arrears apart from the email of 1 July 2022. The Respondents have not engaged in the process before the First-tier Tribunal and have not raised any issues as to why it would not be reasonable to

grant an eviction order. No specific issues regarding reasonableness arise from the information available. No specific needs of the Respondents to live at the specific address have been raised.

7. The Respondents have not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. If anything, the information given by them in the telephone call to the Applicants agent suggests that Universal Credit is in place. There has been a prolonged and persistent failure by the Respondent to address the arrears despite repeated correspondence to them.

8. The significant arrears of £15,600 have had a significant negative impact on the Applicants' financial position as they relied on the income to finance their retirement in supported living accommodation.

9. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicants had provided evidence of significant and persistent rent arrears and attempts of the landlords to engage the tenants in efforts to find assistance and address the arrears. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

10. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act, ground 12, applies.

11. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 20 February 2023.

E : Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act

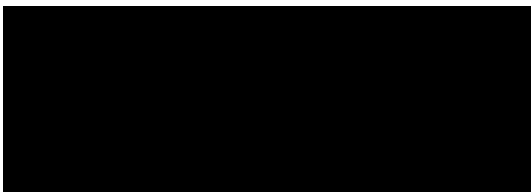
F: Right of Appeal

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.

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

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Legal Member/Chair

19/01/2023

Date
