



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/22/3049

Re: Property at 10 Flat 2, Academy Street, Shettleston, Glasgow, G32 9AA (“the Property”)

Parties:

Mr Paul Hibberson, 1 Tansy Close, West Hunsbury, Northampton, NN4 9XW (“the Applicant”)

Mr Mohammed Abnan Ali Irshad, 10 Flat 2, Academy Street, Shettleston, Glasgow, G32 9AA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 23 December 2021 stating that proceedings for possession will commence no earlier than 26 June 2022 and citing ground 12, together with proof of service on the Respondent by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council;
 - (iv) Rent Statement;
 - (v) Bank Statements;
 - (vi) Copy emails from the Applicant to the Respondent regarding rent arrears; and
 - (vii) Copy letter from the Applicant to the Respondent in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application dated 7 October 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 13th January 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 On 4th January 2023 the Applicant submitted an updated rent statement together with photographs of the property via email to the Tribunal. The said email was intimated upon the Respondent.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 13 January 2023. The Applicant was present. The Respondent was not in attendance. The Tribunal noted that he had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in his absence.
- 5 The Legal Member asked the Applicant to address the Tribunal on the Applicants' position regarding the matter.
- 6 The Applicant explained that the Respondent had moved into the property in May 2021. He had paid the first months rent and then over the next few months had paid around £500 to £600 in odd payments. He had then not paid anything since September 2021. The Applicant explained that he had resided in England at the time and had made attempts to travel to Glasgow to discuss the situation and to carry out some work on the property. However the Respondent frequently said he would not be available or did not respond at all. The Respondent had on one occasion advised he was in hospital outside Edinburgh and had asked the Applicant to travel over to collect the keys for the property. The Respondent had stated that he was getting a bone marrow transplant. However on contacting the hospital in question the Applicant had been advised that there was no one there with the Respondent's name and no bone marrow

transplants were planned for that weekend. The Applicant confirmed that he had had no contact with the Respondent since September 2021.

- 7 The Applicant further advised that there had been windows left open in the property for over a year, which would result in water ingress to the property, and people had tried to break in. The Police had been at the property trying to locate the Respondent. Neighbours had reported people who had no connection with the properties coming into the common stair despite there being a secure entry system. The Applicant had contacted the Respondent shortly prior to the Case Management Discussion advising that he had concerns about the security of the property. He had then emailed the Respondent to advise that he would arrange for someone to attend to secure the windows, one of which had been broken. The factor for the building, Shettleston Housing Association, had sent someone to the property with a representative of the Applicant. They had gained entry to the property and noted that it had suffered significant damage, including cigarette burns to the carpet and significant accumulation of food waste which looked to have been there for some months. There were concerns about this attracting vermin. The locks had been changed and the Applicant had emailed the Respondent to advise of this, and to invite him to collect the keys. There had been no response. The Applicant advised that there was mail in the property dating back to August 2022. It appeared that the Respondent had vacated the premises. The Applicant had no information as to the Respondent's current whereabouts. The Applicant confirmed that he wished to recover the property in order to allow a friend of his to resume occupation. He made reference to the rent statement that had been submitted to the Tribunal on 4th January 2023 which confirmed that the arrears had now increased to £7875.

Relevant Legislation

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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.*

52 Applications for eviction orders and consideration of them

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,
(iii) six months after it begins if neither subsection (3) nor (3A) applies.
(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,
(ii) three months after it begins if subsection (3C) applies,
(iii) six months after it begins if neither subsection (3B) nor (3C) applies
(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]
(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and
(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 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 subparagraph (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. (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.

9 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

10 The parties entered into a Private Residential Tenancy Agreement dated 21st May 2021 which commenced on 22nd May 2021.

11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

12 On 23 December 2021 the Applicant delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 June 2022.

13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

14 In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £450 per calendar month.

15 As at the date of service of the Notice to Leave arrears in the sum of £2025 were outstanding.

16 As at the date of the Case Management Discussion arrears in the sum of £7875 were outstanding.

17 The last payment to the rent account by the Respondent was on 7 September 2021.

18 The Applicant has complied with the pre-action requirements by advising the Respondent of his rental obligations and arrears outstanding and directing him to agencies for support.

19 It is reasonable to make the order sought by the Applicant.

20 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 23 The Tribunal accepted that there were rent arrears outstanding in the sum of £7875. The lack of sufficient payments to the rent account had resulted in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had gone unpaid for three or more months and there was at least one month's rent arrears outstanding as at the date of the Case Management Discussion.
- 24 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from the Applicant at the Case Management Discussion. It was clear that the decision to lodge the application had not been taken lightly by the Applicant and that efforts had been made by him to alert the Respondent to the increasing arrears. It appeared that the Respondent may in fact have vacated the property, having regard to the lack of contact from him in response to the lock change, and the Tribunal accepted that he had attempted to mislead the Applicant by inferring that he was undergoing hospital treatment which had transpired not to be the case. It was clear that the Applicant had suffered significant stress, with the attempts by others to break into the property, the frequent visits by Police and the damage that had been done to the premises. Without the making of an eviction order it was likely that arrears would continue to accrue to the detriment of the Applicant and the Tribunal had nothing before it to contradict the position he had put forward which the Tribunal found to be credible.
- 25 Accordingly, having regard to the significant level of arrears, the efforts by the Applicant to assist the Respondent, the ongoing financial impact on the Applicant, and the Respondent's complete failure to engage, the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case to make an eviction order.

26 The Tribunal therefore determined to make an order for eviction against the Respondents. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

13 January 2023

Legal Member/Chair

Date