



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/22/3486

Re: Property at Craigroyston, Culbokie, Dingwall, IV7 8LA (“the Property”)

Parties:

Ms Stella Keith, 17 Englishton Muir, Bunchrew, Inverness, IV3 8RQ (“the Applicant”)

Mr Colin Mackie, Victoria Mackie, Craigroyston, Culbokie, Dingwall, IV7 8LA (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Grounds 4 and 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 23 September 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 September 2020;
3. Notice to Leave dated 14 June 2022 and received by Royal Mail Track and Trace on 15 June 2022;
4. Section 11 Notice to Local Authority and proof of service by email dated 21 September 2022;
5. Rent Arrears Statement;

6. Applicant's Affidavit dated 14 June 2022;
7. Certificate of Service of Tribunal CMD Notification on the Respondent by Sheriff Officers dated 23 January 2023;
8. Application to amend dated 14 February 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 3 March 2023. The Applicant participated and was represented by her Solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but he did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that they should attend and the Tribunal could determine the matter in absence if they did not.

The Applicants' Representative confirmed that the amount of arrears had increased to £14,510. As far as the Applicant is aware the Respondent are husband and wife who live in the Property alone and have no dependents. Both are understood to have been self-employed.

The Applicant's Representative submitted that it was reasonable to grant the eviction order having regard to the significant arrears.

The Tribunal had regard to Grounds 4 and 12 of Schedule 3 to the Act which provide:

Landlord intends to live in property

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

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

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

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.

(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.

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 1 September 2020;
2. The monthly rent was £900;
3. Notice to Leave had been served on the Respondent on 15 June 2022;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of £14,510;

6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Respondent are husband and wife who live in the Property alone and have no dependents;
9. The Applicant intends to live in the Property as her only or principal home for at least 3 months;
10. It was reasonable to issue an eviction order in the circumstances.

The Tribunal was satisfied that Grounds 4 and 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase and the Applicant's intention/need to live in the Property.

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. Strain

3 March 2023

Legal Member/Chair

Date