



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/22/3590

Re: Property at 14 Union Lane, Perth, PH1 5PU (“the Property”)

Parties:

Mollyletts Limited, 37 Lynedoch Road, Scone, Perth, PH2 6RJ (“the Applicant”)

Ms Magdalena Jagla, 14 Union Lane, Perth, PH1 5PU (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

On 21st September 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property using ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016..

Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement showing a commencement date of 1st August 2021 and a rent of £500 per month
2. Copy Notice to Leave dated 17th August 2022 and proof of service thereof;
3. Section 11 Notice;
4. Rent statement
5. Pre Action Requirement letters

The Application was served on the Respondent by Sheriff Officers on 17th May 2023.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr McEwan. There was no attendance by the Respondent or any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Mr McEwan sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He said that current arrears were £8700. He said that the Respondent was in receipt of Universal Credit but that the housing element was not paid to the Applicant direct. He said that the Respondent lived in the house with a man and a dog, and that there were no children living in the property. He said that he had tried everything to resolve the situation, including reducing the rent for a few months, but that the respondent did not engage.

The Tribunal were satisfied that the ground had been established, and that given that the arrears equated to over 17 months’ rent it was reasonable to grant the order.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 1st August 2021;
3. The rent is £500 per month;
4. A Notice To Leave, dated 17th August 2022, was served timeously and correctly;
5. The arrears when the Notice to leave was served were £3700;
6. The arrears when the application was lodged were £4200;
7. The arrears at the date of the CMD were £8700.

Reasons For Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

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

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

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

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 12 by provision of the rent statement.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal were of the view that the level of arrears made it reasonable to grant the order.

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 Kelly

Legal Member/Chair

Date: 19th June 2023