



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/22/4032

Re: Property at 88 Patterson Street, Ayr, KA8 9HD (“the Property”)

Parties:

Grant Property Enterprises, 21 St Vincent Crescent, Ayr, KA7 4QW (“the Applicant”)

Miss Nicole Campbell, formerly at 88 Patterson Street, Ayr, KA8 9HD and now at 56B Peggieshill Road, Ayr, KA7 3RQ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) a copy of a rent statement
- (5) copies of text messages between the parties regarding the rent arrears.

3. A case management discussion was held on 15 February 2023. Reference is made to the Note from that case management discussion. The applicant was represented by Mr Grant from the applicant company. The respondent was represented by Mr Tierney from Ayrshire Housing Aid Centre. The application was continued that day as the respondent wished to oppose the application albeit there was discussion that this might be a technical objection. The respondent had already submitted written representations about her situation and failure to pay the rent. In order to clarify matters a direction was issued that day directing both parties to provide further information in support of their position, particularly the respondent who was requested to provide a written defence confirming the basis of her opposition to an order being granted. In addition, as the respondent's agent had indicated that the failure to pay rent had been due to ill-health they should submit a medical report in time for the next case management discussion.

4. On 29 March 2023 the applicant submitted an up to date rent statement and a written statement as to why it would be reasonable to grant the order for eviction.

5. On 4 April 2023 the applicant lodged an amended application seeking to amend the ground of eviction to ground 12A substantial rent arrears. A direction was issued to parties about this amended application on 10 April 2023.

6. No written submission or other papers were submitted by the respondent in response to either direction.

7. The case management discussion took place on 15 May 2023. Mr Grant appeared on behalf of the applicant. Mr Tierney appeared on behalf of the respondent.

Discussion

8. Mr Grant advised that the applicant was first seeking to amend the application to the new ground 12A (substantial rent arrears). There were 6 months rent arrears and they asked the tribunal to amend the application to this ground. The respondent's agent advised that he had no objection to the motion to amend the application. The tribunal agreed to this amendment.
9. Mr Grant confirmed that he was seeking an order for eviction today.
10. The respondent's agent advised that there had been a change to the respondent's situation. He advised that she had now obtained temporary furnished accommodation from South Ayrshire Council. He confirmed that the respondent had now moved out of 88 Patterson Street and into the temporary accommodation. The Council have confirmed that they will remove her furniture from 88 Patterson Street and store it for her. The respondent's furniture will be removed from 88 Patterson Street within the next 30 days. He did not oppose the order for eviction which was sought by the applicant.
11. The respondent's agent confirmed that the respondent's new address was 56B Peggieshill Road, Ayr, KA7 3RQ.
12. The applicant had submitted a letter detailing why it thought that it would be reasonable to grant the order for eviction, setting out that there were over 6 months of rent arrears outstanding; and that the applicant had tried to support the respondent in repaying the arrears but no repayment had been made. The rent arrears were now £3,900.

Findings in Fact

13. The Tribunal found the following facts established: -
14. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 2 January 2020.
15. The tenant was Nicole (or Nikki) Campbell.
16. The landlord was Grant Property Enterprises.
17. The property was 88 Patterson, Ayr.
18. Clause 7 of the tenancy stated that rent was £400 a calendar month payable in advance.
19. There was submitted a notice to leave dated 12 September 2022, stating that an application would not be made until 16 October 2022. Eviction was sought under the failure to pay rent ground (Ground 12).
20. The notice to leave had been emailed to the tenant on 12 September 2022. There was evidence of service.
21. On 4 April 2023 a motion to amend the application was made to rely on new ground of eviction 12A - substantial rent arrears (equivalent to 6 months worth of rent).
22. A rent statement showed rent arrears up to the end of March 2023. It set out that no rent had been paid since July 2022. Rent was £400 per month. Rent arrears totalled £3900. There were therefore 6 full months of rent due when the application to amend was made to the tribunal.

23. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority.

24. There was no evidence of failure or delay in any benefit payment to the respondent.

Reasons for Decision

25. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

26. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms :-

“Substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph](#)

(1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). ...

27. Mr Grant appeared for the applicant. The respondent's agent appeared. The applicant sought an order for eviction based on the fact that there were more than six months rent arrears. The respondent's agent did not oppose the amendment to the ground of recovery or the order sought. The respondent's agent advised that the respondent had now left the property. The only matter outstanding was removing her furniture and local authority had agreed to remove it within the next 30 days.

28. The tribunal was prepared on this occasion to find ground 12A met given that there was no objection to the motion to amend or the order sought. The tribunal required to consider if it would be reasonable to grant the order. We took into account that there appeared to be no failure or delay in any benefit payment due to the respondent. We did not consider that the applicant had fully complied with the pre-action protocols, however we are prepared to accept that there was correspondence between the parties about the non-payment of rent. We note that the arrears have continued to accrue and are now over at least £3900. We note that the respondent has now left the property and does not oppose this amended application.

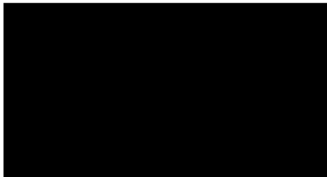
29. Considering the papers before us and the oral submission by the parties, the tribunal was prepared to grant the order for recovery of possession under ground 12A.

Decision

30. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.



15/05/23

Legal Member/Chair

Date