



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

Chamber Ref: FTS/HPC/EV/22/4151

Re: Property at 14 Ferguson Way, Airdrie, ML6 6EY (“the Property”)

Parties:

Mr Cheryl McGeever, 87 Woodlands Crescent, Bothwell, G71 8PP (“the Applicant”)

Mr Robert Sands, 14 Ferguson Way, Airdrie, ML6 6EY (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Miss E Shand (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 not be granted.

Background

1. By application received on 16th November 2022 and made under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an eviction order under ground 12. The Applicant’s representative lodged a rent statement, Notice to Leave dated and served on 22nd August 2022 with evidence of service, a private residential tenancy agreement in respect of the Property commencing on 21st January 2021, pre-action requirement letters, and a section 11 notice with evidence of service.
2. The application and notification of a Case Management Discussion (“CMD”) set down for 7th March 2023 was served upon the Respondent by Sheriff Officers on 31st January 2023.
3. By email dated 23rd February 2023, the Applicant’s representative lodged an updated rent statement showing an arrears balance of £2222.
4. On the morning of 7th March 2023, the Respondent sent an email to the Tribunal in the following terms:

I called to speak to yourself regarding this mornings hearing. I wasn't aware I could be in attendance until I came across a email from my letting agent. I've a full days work ahead so can't even dial in

As of the 24th Feb the arrears are now £1222.00 and I had been due to bring this down further by paying a further £10000 before today's hearing. Still hopefully this payment can be made at some point this week.

I am self employed and such don't have a regular source of income. And iv been chasing overdue invoices constantly. One company ... have been promising payment on a invoice that's been due to been paid before now. It looks likely it may be paid this week. I have messaged Mr Paul Clark, my letting agent this.

The Case Management Discussion

5. A CMD took place by telephone conference on 7th March 2023. Neither party was in attendance. The Applicant was represented by Mr Paul Clark, Aquila Management Services Ltd.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that service had been effected in terms of Rule 6A, the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent
7. Mr Clark explained the background to the application. The Respondent, who lives alone with no dependents, has failed to pay his rent timeously for a considerable period of time. He has had to be chased to make payment. He makes promises of payment that do not materialise. There have been times when the rent balance has been cleared, however, the arrears always accumulate again. The letting agent has been involved in meetings with the Respondent, and with the Citizens Advice Bureau, to work out payment plans. The letting agent has assisted the Respondent in claiming from the Tenant Grant Fund, which cleared some arrears. The Respondent works freelance and claims his invoices are not being paid, and that he cannot pay the rent. Although he promises to clear the balance when his invoices are being paid, often he only pays a small amount to the arrears.
8. Mr Clark said the current outstanding balance is £1222. It was his position that, although the Respondent has said £1000 will be paid this week, he has made this kind of promise so often, Mr Clark would not expect the payment to be made. Mr Clark moved for an eviction order, stating that it would not be executed if the Respondent cleared the arrears.
9. The Tribunal raised an issue in respect of the validity of the Notice to Leave ('the Notice'), as it appeared that the Respondent was not in arrears for three

consecutive months at the time of serving the Notice. The Respondent had a credit balance of £3.00 on 13th June 2022. No rent was paid on 21st June 2022, giving an outstanding balance of £522. The sum of £300 was paid in July 2022, leaving an outstanding balance of £747 at the end of July 2022. A further rental payment became due on 21st August 2022, and the Notice to Leave was served on 22nd August 2022. At that time, the Respondent had not been in arrears for three or more consecutive months. The Respondent was first in arrears of rent (on this occasion) as at 21st June 2022; therefore, the expiry of the three-month period would be 21st September 2022. The Tribunal referred to the Upper Tribunal cases of Majid -v- Gaffney [2019] UT 59 and Rafique -v- Morgan UTS/AP/21/0037 where the facts were similar and the Upper Tribunal had found in both cases that the Notice was not valid.

10. The Tribunal adjourned to consider the validity of the Notice.

Reasons for Decision

11. The Tribunal may only order eviction if one of the grounds specified in Schedule 3 of the Act applies. It is clear from the terms of the Notice that ground 12 is being relied upon. As at the date of the Notice the tenant must have been in rent arrears for three or more consecutive months. As at 22nd August 2022, the Respondent was not in rent arrears for three or more consecutive months. The Respondent must have been in arrears for the specified period of time, not simply owing rent. For this reason, ground 12 does not apply as at the date of service of the Notice to Leave.

12. The Tribunal considered, therefore, that the Notice was not valid as it specified a ground for eviction which was not satisfied as at the date of the service.

Decision

13. The Tribunal refused to grant the order sought.

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.

Legal Member/Chair

7th March 2023
Date