



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/23/0205

Re: Property at 6 Middlemass Court, Falkirk, Stirlingshire, UK, FK2 7ER (“the Property”)

Parties:

Mrs Rhonda Jager - Stirling, Buggrueti Strasse, 31 Benken - 59, Switzerland, 8717, Switzerland (“the Applicant”)

Mr Gary Risk, 6 Middlemass Court, Falkirk, Stirlingshire, UK, FK2 7ER (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 29 June 2023, the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/23/0431.

Prior to the CMD the Tribunal received the following additional representations from the Applicant:-

- i. Email dated 26 April 2023 with attachment;
- ii. Email dated 18 May 2023;
- iii. Email dated 30 May 2023.

The Tribunal also received the following representations from the Respondent:-

Email dated 10 May 2023;

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 1 October 2021.
- ii. The rent payable in terms of the PRT is £525 per calendar month payable in advance on the first day of each month.
- iii. On 21 June 2022, the Applicant served on the Respondent by email of the same date a Notice to Leave requiring the Respondent remove from the Property by 22 July 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months.
- iv. On 21 June 2022 the Applicant also served on the Respondent by email a letter in satisfaction of the pre-action protocol of the Scottish Government.
- v. On or around 24 September 2022 the parties entered into an agreement in terms of which the Respondent agreed to pay to the Applicant the ongoing monthly rent due plus an additional amount towards the arrears calculated at a total of £165 per week payable each Friday. The Respondent failed to adhere to that agreement.
- vi. By email dated 25 January 2023 the Applicant served on Falkirk Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. The application for an eviction order is dated 4 April 2023.

The CMD

At the CMD the Applicant made the following representations in respect of this application and the associated application FTS/HPC/CV/23/0431:-

- i. The Applicant understood from her agents that the rent arrears are £4,115.
- ii. No payments have been made by the Respondent since 10 February 2023 when a payment of £130 was made.
- iii. The Applicant's agent has encouraged the Respondent to pay the rent and continues to do so. Indeed, Falkirk Council had left-over funding from COVID19 and the Applicant's agent sent information to the Respondent. However, he failed to reply.
- iv. The Respondent is believed to continue in occupation of the Property. No inspection has been carried out within the last month.
- v. The Applicant is unaware of the Respondent having any partner and is unaware of the arrangements for the Respondent's children to stay at the Property.
- vi. The Property is a first floor flat and has 2 bedrooms.
- vii. The Applicant has no information on whether the Respondent has sought alternative accommodation. The Applicant's agent has given the Respondent a lot of guidance in an effort to help him find something and has made the Respondent aware of the consequences of not getting his rental payments back on track in terms of any reference that might be required.
- viii. The Applicant's agent has spoken to the Respondent about Universal Credit but given the small sums paid towards the rent due either he did not apply or did not qualify therefor.
- ix. The Applicant has never met the Respondent.
- x. The Respondent needs a lot of encouragement to reply to enquiries.

- xi. The Applicant has no information on the Respondent's current employment circumstances.
- xii. On two occasions the Respondent made reference to a tax repayment from HMRC. No monies have been received.
- xiii. The Applicant asks the Tribunal to grant permission for the eviction application also to proceed on the basis of Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") on the basis that substantial rent arrears have now accrued, being arrears in excess of 6 months.
- xiv. The Applicant seeks an eviction order.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of the PRT that commenced on 1 October 2021.
- ii. The rent payable in terms of the PRT is £525 per calendar month payable in advance on the first day of each month.
- iii. On 21 June 2022, the Applicant served on the Respondent by email of the same date a Notice to Leave requiring the Respondent remove from the Property by 22 July 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months.
- iv. On 21 June 2022 the Applicant also served on the Respondent by email a letter in satisfaction of the pre-action protocol of the Scottish Government.
- v. On or around 24 September 2022 the parties entered into an agreement in terms of which the Respondent agreed to pay to the Applicant the ongoing monthly rent due plus an additional amount towards the arrears calculated at a total of £165 per week payable each Friday. The Respondent failed to adhere to that agreement.
- vi. By email dated 25 January 2023 the Applicant served on Falkirk Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. The application for an eviction order is dated 4 April 2023.
- viii. The rent arrears are £4,115 which is excess of 6 months rent.
- ix. No payments have been made by the Respondent since 10 February 2023 when a payment of £130 was made.
- x. The Respondent is still in occupation of the Property.
- xi. The Respondent has failed to meaningfully engage with the Applicant.
- xii. It reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Respondent did not attend the CMD. The factual background narrated by the Applicant within the application papers and by the Applicant orally at the CMD was not challenged and was accepted by the Tribunal.

Section 52(5) of the 2016 Act states:-

"(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.”

Ground 12A of Schedule 3 of the 2016 Act did not form a ground of eviction in terms of the Notice to Leave served by the Applicant on the Respondent. However, the Respondent has allowed more than 6 months rent arrears to accrue. The Tribunal considered it reasonable that Ground 12A form a basis for an eviction order and granted permission for the application to be amended to that effect.

The Tribunal thereafter considered whether or not it would be reasonable to grant an eviction order and determined that it is reasonable to grant an eviction order under Ground 12A of Schedule 3 of the 2016 Act.

Decision

The Tribunal:-

- i. Granted permission to the Applicant to allow the application to include Ground 12A as a basis for an eviction order being sought; and
- ii. Thereafter granted an eviction order in favour of the Applicant against the Respondent in terms of Ground 12A.

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.

G Buchanan

Legal Member/Chair

29 June 2023
Date