



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/23/0216

Re: Property at 12 Atholl Place, Inverness, IV2 6EX (“the Property”)

Parties:

Lighthouse Properties (Scotland) Ltd, The Lighthouse, Craigton, North Kessock, Inverness, IV1 3YG (“the Applicant”)

Mr Ian Urquhart, Mrs Maria Ragosta, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and James Battye (Ordinary Member)

Decision in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 15 March 2019;
 - (ii) Notice to Leave dated 6 December 2022 stating that proceedings for possession will commence no earlier than 6 January 2023 and citing grounds 10 and 12A, together with proof of service on the Respondent;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Highland Council;

- (iv) Rent Statement;
 - (v) Bank Statements;
 - (vi) Copy emails from the Applicant's representative to the Respondent regarding rent arrears;
 - (vii) Copy photographs of the property;
 - (viii) Copy correspondence from the Applicant's representative to the Respondent containing information regarding the pre-action requirements; and
 - (ix) Application for service by advertisement together with trace report.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 13th July 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by service by advertisement on the Tribunal website. No written representations were received from the Respondent.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 13 July 2023. The Applicant was represented by Ms Alice Cochrane. Neither Respondent was in attendance. The Tribunal noted that service of the application paperwork had been effected by advertisement on the Tribunal website and therefore determined to proceed in their absence. It was noted that the Applicants had instructed a trace report and had been unable to locate the Respondents current address.
- 4 The Tribunal explained the legal test and asked Ms Cochrane to address the Tribunal on the Applicant's position.
- 5 Ms Cochrane confirmed that the Respondents had been tenants of the property since 2019. They had resided there with their young daughter. The second named Respondent had then returned to the Philippines with her daughter. Ms Cochrane confirmed that there had been some issues with rent during the coronavirus pandemic. The first named Respondent had taken ill and fell into arrears. He had health issues which required an operation on his foot. The Applicant was satisfied that he was paying what he could. He had recovered from his operation and obtained employment as an offshore worker. He had mentioned a contract in the USA that would give him funds to make repayment of the arrears. However this had not transpired and there had been no further

contact from him. In January 2023 Ms Cochrane had spoken to the Respondents' next of kin who confirmed that they had all moved back to the Philippines. You could confirm that by looking at their social media. Ms Cochrane had checked the property on a regular basis and nothing had moved since June last year. The property had clearly been abandoned. The arrears now stood at £11,300. In response to questions from the Tribunal Ms Cochrane confirmed that she had last been to the property the day prior to the Case Management Discussion.

Relevant Legislation

- 6 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal’s power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(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.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 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).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

- 7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application, as is the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Findings in Fact and Law

- 8 The parties entered into a Private Residential Tenancy Agreement dated 15 March 2019 which commenced on that date.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £700 per calendar month.
- 11 On 6 December 2022 the Applicant delivered a Notice to Leave to the Respondents. The Notice to Leave cited grounds 10 and 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 28 June 2022.
- 12 The arrears outstanding as at the date of the Notice to Leave were £6,400.

- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 As at the date of the Case Management Discussion arrears in the sum of £11,300 were outstanding.
- 15 The Respondents previously resided at the property with their young daughter.
- 16 The Respondents have vacated the property and moved overseas.
- 17 The property is currently unoccupied and has been so since on or around June 2022.
- 18 It is reasonable to make the order sought by the Applicant.
- 19 The provisions of grounds 10 and 12A of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 20 The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that it would not be prejudicial to the interests of the parties.
- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon grounds 10 and 12A of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondents and therefore that application could be entertained.
- 22 Based on the rent statement produced by the Applicant, and the submissions from Ms Cochrane at the Case Management Discussion, the Tribunal was satisfied that at least six months rent had been outstanding when the Notice to Leave was served upon the Respondents and as at the date of the Case Management Discussion. The Tribunal was further satisfied that the arrears were not due to a failure or oversight in the payment of a relevant benefit, and that the Respondents were no longer occupying the property. There was nothing before the Tribunal to contradict the evidence from the Applicant in this regard.
- 23 The Tribunal therefore considered the question of reasonableness. The Tribunal found Ms Cochrane to be wholly credible in her submissions. The arrears in this case were significant. Even in circumstances where the Respondents had entered the proceedings the Tribunal would find it difficult to

justify the reasonableness of not making an order where there were arrears in excess of £11,000. That equated to approximately 16 months of unpaid rent.

24 Whilst the Tribunal noted that the Respondents had a young child, the evidence to establish that they were no longer occupying the property was persuasive. The Applicant had produced photographs which indicated they were no longer in residence, with mail piled up behind the door. The Tribunal accepted the Applicant's submissions that they had moved overseas, which was reflected in the complete lack of engagement in recent months. Accordingly having weighed up the particular facts and circumstances of this case the Tribunal was ultimately satisfied that an eviction order was reasonable.

25 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

13 July 2023

Legal Member/Chair

Date