



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/23/0762

Re: Property at 144 Cornhill Terrace, Aberdeen, AB16 5EW (“the Property”)

Parties:

Northwood (Aberdeen) Ltd, 207-211 Rosemount Place, Aberdeen, AB25 2XS (“the Applicant”)

Ms Karen Faulds, 144 Cornhill Terrace, Aberdeen, AB16 5EW (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 9 March 2023. The documents produced were a Tenancy Agreement dated 31 March 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies)(Scotland) Act 2016 (“Act”) dated 6 October 2022 (“Notice to Leave”) with attached rent statement showing arrears of £3375; email to the Respondent dated 6 October 2022 attaching the Notice to Leave; email from the Respondent dated 6 October 2023 responding to Notice to Leave; copy emails from the Applicant’s Representative to the Respondent regarding rent arrears dated from 8 June 2022 to 10 November 2022; notification to the Local Authority in terms of

section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 2 February 2023 and sheriff officer's execution of service certifying service of the Application on 19 May 2023.

The Case Management Discussion (CMD)

2. The CMD took place by teleconference on 21 June 2023. The Applicant was represented by Mr Scott Morrison. The Respondent was absent. No written representations had been received from the Respondent by the Tribunal.
3. The CMD was conjoined with an application for a Payment Order under Reference FTS/HPC/CV/23/0764.
4. An updated rent statement had been produced to the Tribunal. This showed that no payments of rent had been made by the Respondent since the application was made to the Tribunal and the rent arrears as at the date of the CMD amounted to £8100.
5. The Tribunal went over the paperwork and the prior procedure. The purpose of the CMD was explained, and that in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Rules') the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision.
6. Mr Morrison said that the most recent communication he had with the Respondent was on 9 June 2023 and had been in relation to a routine inspection of the Property. The Respondent had stated to the Applicant's Representative in response to this email that no one would enter the Property until after the CMD on the 21 June 2023. She was accordingly aware of the date. There had been no recent communication regarding the rent arrears. The Applicant's Representative had also on the 9 June 2023 advised the Respondent of the outstanding rent and pointed her again in the direction of the Government website regarding rent arrears and help agencies. There had been no response by the Respondent to this.
7. Mr Morrison said that the initial tenancy agreement had a start date of 1 April 2022. The tenancy agreement provided for rent to be paid at the rate of £675 per month. The Applicant had carried out appropriate references and had credit checked the Respondent. There was nothing untoward and the tenancy was entered on that basis.
8. There had been some initial issues regarding a leak in the bathroom of the Property which had been checked and repaired. At one point the Respondent had withheld rent as she did not have the full use of her bathroom. Once this issue was resolved there was another issue where the Respondent complained of mice or rats in the Property and the Applicant had sent a pest controller to the Property who had blocked up areas to prevent access by any rodents.

9. After that the Applicant had expected the rent to be paid again. The Applicant had not received much response at all from the Respondent who eventually indicated that she had been burying her head in the sand for which she had apologised. She stated that she had been involved in a car crash and had been absent from her work and unable to pay the rent.
10. The Applicant had made enquiries regarding what was a manageable amount to pay to stop the arrears accumulating and to look at a payment plan but there had been a lack of willingness on the Respondent 's behalf to deal with this.
11. When the Notice to Leave was served the Applicant had stated that this could be revoked if something could be sorted out by way of a payment plan. The Notice to Leave stated that proceedings would not be raised before 1 January 2023 and the Applicant had waited until 9 March 2023 to give the Respondent some time to sort the situation. During that two months there was ongoing correspondence with the Respondent but the Respondent refused to co-operate and was insistent that she would only enter a payment plan if she was given a guarantee that the Eviction application would not be made.
12. Mr Morrison said that the Respondent is a single mother with three children two of whom are younger and one of whom is aged approximately 20 years. When she first entered the tenancy agreement he understood the Respondent had a mixture of working which involved her working from home and also being office based. During discussions that he had with the Respondent after she moved in she had started a new job but was signed off after her motor vehicle accident .She had sustained a broken collar bone. She had told Mr Morrison that her employer had released her as she was unable to work.
13. There were no adjustments carried out at the Property regarding any disability issues.
14. Mr Morrison was able to direct the Tribunal to e-mails which he had sent to the Respondent suggesting she speak with Money Advice Scotland.
15. The Applicant had in terms of the Form E requested that eviction be granted under Ground 8 as opposed to Ground 12. The Tribunal noted that the Notice to Leave stated that the Respondent was in arrears of rent of £3375 and that the Respondent was in arrears over three consecutive months. This was also the specified reason stated on the Form E. At the time the Notice to Leave was served the Respondent was in arrears of at least 3 months' rent. The specifics of the Ground were satisfied it was just the wrong number had been inserted in the Form E and the Tribunal allowed an amendment in terms of Rule 13.

16. Included in the Form E was a request to apply for eviction under Ground 8A, (which should have been Ground 12 A). Mr Morrison accepted that at the time the Notice to Leave was served that the arrears of rent did not amount to 6 months of rent due.

Findings in Fact

17. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 1 April 2022;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £675 per calendar month payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 6 October 2022;
- (iv) On 6 October 2022 the Respondent was in rent arrears over three consecutive months;
- (v) The Respondent has been in continuous arrears of rent since June 2022;
- (vi) The Respondent is in arrears of rent amounting to £8100 at the date of the CMD.

Reasons for Decision

18. *Section 51 of the 2016 Act states as follows:*

51 (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.

19. *Ground 12 of Schedule 3 to the 2016 Act states as follows:*

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) (2).....

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

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

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to— (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

20. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

21. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since June 2022. . No explanation had been given by her as to the reason for falling into arrears.

The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant, offer her assistance and signpost her to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

22. Included in the Application the Applicant had sought to rely on Ground 8A (meaning Ground 12 A) of Schedule 3 of the 2016 .This application was refused. Ground 12A requires the applicant to demonstrate that the Respondent owed the equivalent of at least six months' rent at the date the Notice to Leave was served. This was not the case here. The arrears level at the date of service of the Notice were £3375.Ground 12A could therefore not be established.

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.

21 June 2023

Legal Member/Chair

Date