



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/23/0864

Re: Property at 5A Bobbins Gate, Paisley, PA1 2NY (“the Property”)

Parties:

Mr Bruce McFee, Mrs Iris McFee, 36 Troubridge Avenue, Kilbarchan, Johnstone, PA10 2AU (“the Applicant”)

Mr Stephen McCarthy, 5A Bobbins Gate, Paisley, PA1 2NY (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Mike Scott (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of eviction be granted.

Background

1. This is an application for recovery of the Property. The application is dated 17 March 2023 and states that the Applicant is seeking recovery under Ground 12, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions.
2. The Tribunal had a copy of the Sheriff Officer’s execution of service on the Respondent dated 24 July 2023 which was in respect of intimation of the date and time of the case management discussion.

3. The case management discussion was held by audio conference on 18 August 2023. Mr John McKeown, solicitor represented the Applicant who was not present. The Legal Member outlined the purpose of a case management discussion and the terms of Rule 17 of the Chamber Rules:

Case management discussion

17.— (1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision

Preliminary Matters

4. The tribunal noted that, from correspondence submitted by the Applicant's Representative, the Respondent had been in prison at some point and that it therefore required to be satisfied that service had been properly effected by the intimation of the case management discussion being posted through the door of the Property. Mr McKeown said that the Respondent's daughter had telephoned the Applicant's letting agent on 3 May 2023 and had advised that her father was no longer in prison and had returned to the Property. On 9 June 2023, the

Respondent contacted the letting agent and had discussed the possibility of entering into a payment plan. Mr McKeown submitted that it was reasonable to conclude that the Respondent is not in prison and that service had been properly carried out.

5. The tribunal accepted that the Respondent had received notification of the case management discussion.
6. Mr McKeown said that he was seeking to amend the grounds to support the application for eviction to include Ground 12 A which is that the Respondent has substantial rent arrears. He had submitted an amended application form. Mr McKeown referred the tribunal to a notice to leave which had been served on the Respondent on 8 February 2023 in which the Respondent was advised that the Applicant was relying on Ground 12 in relation to possession of the Property. Mr McKeown said that, at the date of the notice to leave, the level of rent arrears was £1200 which equated to three months. Mr McKeown referred the tribunal to a subsequent notice to leave dated 16 May 2023 which was served on the Respondent on 27 July 2023. The tribunal had before it a rent statement showing the current level of arrears to be £4000 and noted that, in May 2023, the level of arrears was £2400 which equated to six months
7. The tribunal allowed the application to be amended to include Grounds 12 and 12A.

Documents before the tribunal

8.1 Copy of the private residential tenancy agreement for the Property dated 4 February 2019 showing the commencement of the tenancy to be 4 February 2019 and the monthly rent to be £400.

8.2 Copy rent statement from November 2022 to August 2023 showing the rent outstanding to be £4000.00

8.3 Notices to Leave dated 3 February 2023 and 16 May 2023 and served respectively on 8 February 2023 and 27 July 2023.

8.4 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.

8.5 Copies of pre- action protocol letters sent to the Respondent.

8.6 Title Sheet REN100409.

Findings in Fact

- 9.1 The Applicant is the owner of the Property.
- 9.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property on 4 February 2019.
- 9.3 The start date for the tenancy was 4 February 2019.
- 9.4 The monthly rent for the Property is £400.
- 9.5 The Applicant gave the Respondent Notice to Leave on 8 February 2023 and 27 July 2023.
- 9.6 There are current arrears of rent amounting to £4000.
- 9.7 The rent arrears on 8 February 2023 were £1200.
- 9.8 The rent arrears on 16 May 2023 were £2400

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

Section 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.*

(introduced by section 51)

Schedule 3, Part 12

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

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).

(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

(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.

Evidence and Submissions

10. The tribunal had regard to the documentation which had been lodged by the Applicant.

11. The rent statement showed that there are arrears of rent of £4000 and that no rent had been paid since October 2022.

12. Mr McKeown said that the Respondent lived in the Property on his own and that, as far as the Applicant's letting agent is aware, the reason for non payment of rent is not connected with any issues around state benefits.

13. Mr McKeown said that there is no mortgage on the Property and that the Applicant has three buy to let properties. He said that income from the Property is relied on to provide funds to assist in the care of a disable child of the Applicant.

Discussion and Reasons

14. The tribunal had regard to the documentation which had been lodged by the Applicant.

15. The rent statements showed that there have been arrears of rent since November 2022 and that, at the time the second notice to leave had been served, there were arrears equating to six months' rent.

16. The documentation lodged by the Applicant evidenced that appropriate notice had been given to the Respondent and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

17. The tribunal considered if the requirements of Grounds 12 and 12 A were met. There clearly were arrears of for more than one period and the cumulative amount of the rent arrears was equivalent to more than six months' rent.

18. The tribunal saw no reason to defer consideration to a Hearing. The Respondent had the opportunity to submit written representations and/or appear at the case management discussion and had chosen not to do so. The tribunal had sufficient information to determine the application.

19. The tribunal was required to balance the Applicant's position against that of the Respondent. It accepted that the Applicant was and is suffering financially as a result of the non-payment of rent. The tribunal had no information about the Respondent's circumstances.

20. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of eviction be granted.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
18 August 2023**