



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/23/1319

Re: Property at 38 Muirhead Way, Glasgow, G64 1YG (“the Property”)

Parties:

Mr Stuart Hill, Mrs Fiona Hill, 16 Teviot Avenue, Glasgow, G64 3LZ (“the Applicant”)

Mr Joe Ross, Ms Amber Landsburgh, 38 Muirhead Way, Glasgow, G64 1YG (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This was a case management discussion in respect of an application by the Applicant for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated with a commencement date of 26th April 2022
 - Copy Notice to Leave dated 20th March 2023
 - Copy email serving notice to leave dated 20th March 2023
 - Copy S 11 Notice and email to East Dunbartonshire Council dated 9 June 2023.
 - Rent statement showing sum due on 15th April 2023 of £2894.17
3. On 18th July 2023 the Applicant’s representative wrote asking to amend the application to include Ground 12 A and providing a further Notice to Leave dated and sent by email to the Respondents on 15th June 2023 relying on Ground 12 A that there are substantial rent arrears. The Applicant’s

representative advised they were asking the Tribunal to consider this ground in addition to the original ground 12 in terms of S52(4) of the 2016 Act.

The CMD

4. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Ms Jennifer McMillan of Pacitti Jones letting agent and Mr Hill the first named applicant was also in attendance..
5. The Applicant was seeking eviction on Ground 12 A of Schedule 3 to the 2016 Act
6. The Respondents did not attend nor were they represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 3rd August 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondents have been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in their absence.
7. Ms McMillan spoke on behalf of the Applicant and advised that they were seeking an order for eviction of the Respondents who are the tenants in the Property. She explained that the Respondents are due to pay £895 per month in rent and the last payment was made on 15th February 2023, when arrears had already accrued and with no further payments made since then.
8. Ms McMillan understood the Respondents to be adults with no children living in the property and whom, she believed, both were working although she indicated they may be self- employed. She advised that they had been communicating at first earlier this year and had offered to make a payment plan but it had not been realistic and no payments towards the arrears had been made. There has been no recent contact and although the tenants had asked for repairs they have now not responded to the agent or contractors and no access has been granted. She further advised there are some complaints of anti-social behaviour and submitted that in light of the extent of the arrears which were 6 months at the date of service of the latest Notice to Leave and are now £7220, and given their lack of contact she submitted it would be reasonable for the order for eviction to be granted.
9. Mr Hill confirmed what his representative had said, adding that this was his only let property which had been the Applicants first house when they moved to Scotland in 2020. He was now very concerned about the state of the Property and advised that he had reports that the tenants may not be there as they had not been seen for some time. He clarified that a £60 charge on the rent statement in January was in fact for a call out for a plumber and not rent.

Facts

1. The Applicants and the Respondents entered into a lease of the Property which commenced on 26th April 2022.
2. The Respondents are still in control of the Property and the tenancy is continuing.

3. These proceedings were raised on 20 April 2023 and the application included a copy of the Notice to Leave.
4. A further notice to leave dated 15th June 2023 was served on the Respondent by email confirming that no proceedings would be raised before 16th July 2023.
5. A Section 11 notice has been served on East Dunbartonshire Council.
6. The Rent due is £895 payable in advance in terms of the lease.
7. There were 6 months' rent arrears outstanding at the date of service of the Notice to Leave on 15th June 2023.
8. The current rent contractually due and not paid is £7,220.
9. The last payment made was on 15th February 2023 for £895.
10. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 A of Schedule 3 of the Act as the relevant grounds of eviction. This notice to leave was served by email on the Respondents on 15th June 2023 and was in addition to the earlier emailed Notice to leave dated 20th March 2023 which relied on ground 12. The Applicants have asked for their application to be amended to include this new Ground and evidence to support it. In terms of S52(4) of the 2016 Act a ground of eviction can be considered even if it is not stated in the Notice to Leave accompanying the landlord's application provided it is included with the Tribunal's permission. The Tribunal considered whether it should allow this additional ground to be included and agreed it should, given there has been no representations made by either Respondent; given that the Respondents have stopped communicating with the landlords or their agent and are not granting access to the property. Given this evidence along with the increasingly substantial rent arrears the Tribunal agreed it would be reasonable to allow the application to be amended to include Ground 12A supported by the second notice to leave. The Tribunal considered that had the Applicants reapplied separately for an application under Ground 12A then that application could have been conjoined with this one in any event and therefore it appeared reasonable to the Tribunal that ground 12A should be considered as a ground of eviction today.
- The Notice to Leave stated how the ground of eviction was met namely that the rent arrears amounted to 6 months rent.
- Grounds 12 A require 28 day's notice under the current rules. The Notice sets out the notice period as expiring on 16th July 2023 and was served by email on 15th June 2023. This Application is therefore timeous.
- The Tribunal considered whether the terms of Ground 12 A were met namely that the tenant has substantial rent arrears. This ground may be met if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as six months' rent under the tenancy on the day the Notice to Leave was served and the Tribunal finds it reasonable that

an order for eviction be granted. The rent statement shows that as 15th June 2023 the sum due and outstanding was £5,430 even after deducting the £60 which is not due for rent but included in the statement, rent is due in the amount of £5,370. The Tribunal accepted that Ground 12 A has been met.

- The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Ms McMillan to be credible in her response to questions and accepted that the Respondents have not been in contact recently, have not maintained any payment plan and has not made any payment since February more than 6 months ago. The Respondents have made no effort to pay the arrears, they have stopped paying any rent for the last few months and have not been in communication with the Applicant. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.
- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 A being an eviction ground specified in the application and in the Notice to Leave is met, and that it is reasonable for the Tribunal to grant the application.

- Decision

An order for possession is 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.



Legal Member/Chair

5th September 2023

Date