



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/23/2058

Re: Property at 15 Eglinton Street, Irvine, KA12 8AX (“the Property”)

Parties:

Mr David Bratchie, 16 Seagate, Irvine, KA12 8RH (“the Applicant”)

Miss Sophie Kirkwood, 15 Eglinton Street, Irvine, KA12 8AX (“the Respondent”)

Tribunal Members:

Nairn Young (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

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 21 September 2023, by teleconference. The Applicant was represented on the call by Ms Thomson, of Taylor & Henderson, solicitors. Mr Colquhoun, also from that firm, was observing. The Respondent did not phone in to the call and was not represented. The commencement of the CMD was delayed by 10 minutes to allow for any technical issue she may have been experiencing, but there remained no contact from her.

Notice of the CMD was served on the Respondent by sheriff officers on 21 August 2023. Due to an administrative error, the papers served with that notice did not include the Form E and paper apart that had originally been submitted by the Applicant with the application. The Tribunal considered that the Respondent had had notice of the CMD taking place and had chosen not to attend. Although the Form E and paper apart had not been included in the papers she received, the Tribunal considered that she had received fair notice of the Applicant's case. The ground relied on was set out clearly in a separate email from the Applicant that had been included in the papers she received; and the other supporting documentation was also clear in setting out the basis for the application. The information that had been sent included everything that was necessary to comply with rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The Tribunal therefore considered that it was fair to proceed in the Respondent's absence, on the basis of the papers she had received.

- Findings in Fact

The case is unopposed. The following are the relevant facts set out in the application upon which the Tribunal made its decision:

1. The Applicant lets the Property to the Respondent in terms of a private residential tenancy with a start date of 5 October 2021.
2. In terms of that agreement, rent of £415 is due on the fifth day of each month.
3. Notice to leave was served on the Respondent by the Applicant on 14 March 2023, indicating his intention to rely on Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application for eviction to follow.
4. The notice to leave stated the earliest date that an application could be raised was 5 May 2023.

5. The Respondent has not made any payment of rent since the notice to leave was served.
 6. As at the date of the CMD the Respondent was in arrears of rent to the sum of £4,980.
 7. The Applicant did not observe the pre-action protocol prescribed by Scottish Ministers.
 8. The Applicant has been subjected to threatening communication and spurious complaints by the Respondent.
- Reasons for Decision
9. The Applicant had applied to the Tribunal for permission to allow him to amend the application to rely on Ground 12A of Schedule 3 to the Act, and to proceed on that basis, notwithstanding that it was not mentioned in the notice to leave.
 10. At the time the notice to leave was served, the ground would not have been satisfied: but it is now. The Tribunal considered it was fair to allow its inclusion and for the application to proceed on that basis. Ground 12A is in effect an extension of Ground 12, applicable where 6 months or more rent is owed. The notice period is the same. If the Respondent had been in a position to address Ground 12 prior to the CMD, she would automatically have addressed Ground 12A at the same time. The fact is that neither ground has been addressed. To make the Applicant return to the start of this process to serve notice to leave referring to Ground 12A would be to require him to expend significant additional time and money, against a background of the Respondent making no rental payments at all. That would not accord with the overriding objective: in particular the requirement to avoid delay. The Tribunal therefore considers that it is fair to allow the application to be amended and proceed in reliance on Ground 12A.

11. The Tribunal also noted that the notice to leave served referred to a date as the first date upon which an application could be raised that was not the date required by s.62(1)(b) of the Act; but was in fact a date almost a month later. The Tribunal was asked to apply s.73 of the Act to overlook this error, on the basis that it did not materially affect the effect of the notice. It agreed to do so, on that basis. The error has the effect of lengthening the period of notice and thus still affords the Respondent the statutory period to address the ground relied on.

12. The Tribunal found that the Respondent was in rent arrears to a sum in excess of 6 months' worth of payments. The Tribunal considered that it was reasonable to grant the order. The sum owed is large and no attempt appears to be being made on the part of the Respondent to address it. She did not attempt to oppose the application or put any information before the Tribunal that would tend to suggest it was not reasonable to grant the order. While the Tribunal noted that the pre-action protocol had not been observed by the Applicant; it also noted that the Applicant has been subject to threatening communication and spurious complaints on the part of the Respondent. The Tribunal considered that that offered mitigation for the failure to engage the protocol. It is not credible to suggest that the Respondent would have reacted favourably to further communication of that type from the Applicant, given her behaviour towards him. The fact that she has failed to make any attempt to address the arrears tends to strengthen that conclusion.

- Decision

Eviction order 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.

[Redacted Signature]

Legal Member/Chair

21 September 2023

Date