



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/20/2637

Re: Property at 38 Mansfield Road, Bellshill, ML4 3AQ (“the Property”)

Parties:

Mr William Andrew James Damian Young, Ms Laura Crombie, 48 Kenilworth Crescent, Bellsill, ML4 3EG; 48 Kenilworth Crescent, Bellshill, ML4 3EG (“the Applicants”)

Mr Thomas Bunch, 38 Mansfield Road, Bellshill, ML4 3AQ (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the property at 38 Mansfield Road, Bellshill 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 7 September 2019;
 - (ii) Notice to Leave dated 12 June 2020 stating that proceedings for possession will commence no earlier than 16 December 2020 and citing ground 12;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council and proof of delivery;
 - (iv) Rent Statement; and
 - (v) Copy Letter from the Applicant's Representative to the Respondent dated 9 December 2020.
- 2 In response to a request from the Tribunal the Applicant subsequently provided proof of service of the Notice to Leave by recorded delivery and hand delivery.
- 3 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 27 April 2021, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. 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 Sheriff Officers on 24 March 2021.

First Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 27 April 2021. The Applicant was represented by Mrs Joanne Hogg, Stodarts Solicitors and accompanied by Barry Haq, Trainee Solicitor, as an observer. The Respondent was not present. The Tribunal noted that service of the application paperwork had been effected upon him by Sheriff Officers which included notification of the date, time and location of the Case Management Discussion. The Tribunal therefore determined to proceed in his absence.
- 5 Mrs Hogg addressed the Tribunal on the order sought. She advised that the tenancy was managed by a letting agent on behalf of the Applicant therefore much of the discussions between the parties had taken place between the Applicant's letting agent and the Respondent directly. Mrs Hogg advised that she hadn't been involved herself in any discussions with the Respondent but she had obtained some information from the letting agent as to what discussions had taken place. She took the Tribunal through the information she had been provided with.
- 6 Mrs Hogg explained that the letting agent had been advised by the Respondent back in March 2020 that he had been placed on furlough. At that time some discussions had taken place regarding the rent. It was made clear to the Respondent that rent would still be due and efforts were made to discuss whether he would be entitled to any form of housing benefit. Mrs Hogg stressed that arrears had in fact began to accrue in November 2019 then rent had stopped completely in March 2020. The current balance was £5850. The letting agent had then received conflicting information from the

Respondent to the effect that he was not furloughed. He had also advised that he was not entitled to any assistance with his rent from any form of benefit. There had been numerous text messages sent to the Respondent from the letting agent which Mrs Hogg had copies of but these regrettably had not been submitted to the Tribunal. Mrs Hogg also made reference to a letter that was sent to the Respondent in December 2020 regarding the arrears which had set out contact details for assistance. A copy of this letter had been submitted with the application form.

- 7 Mrs Hogg explained that the letting agent had made numerous attempts to engage the Respondent in discussions about payment proposals and had been trying to arrange visits with him to discuss how this could be managed. The agent had also attempted to carry out inspections of the property but access was not permitted. It was her position that the Respondent had been given ample time to address his rent arrears and had been referred to various financial help organisations, but had failed to engage. The Applicant therefore believed that the pre-action requirements had been complied with and was seeking the eviction order.
- 8 In response to questions from the Tribunal Mrs Hogg confirmed that the Respondent was believed to have been in employment when the arrears began to accrue in March 2020. She understood him to reside alone, there was no information regarding any dependents and the tenancy was in his sole name.
- 9 The Tribunal adjourned for a short period to consider the terms of the submissions from Mrs Hogg. Upon resuming the Case Management Discussion the Tribunal noted that this was an application to which the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("the Regulations") applied. The Tribunal therefore required to be satisfied that efforts had been made by the Applicant to comply with the pre-action requirements under Regulation 4. Whilst the Tribunal was grateful for the submissions from Mrs Hogg, it wished to see the evidence of the action taken in the form of the documents Mrs Hogg had referred to during her verbal representations at the Case Management Discussion in order to make a proper determination of the application. Accordingly the Tribunal determined to adjourn the Case Management Discussion and issue a Direction under separate cover requesting production of the said evidence of compliance with the pre-action requirements. By email dated 11 May 2021 the Applicant provided additional documentation in response to the Direction.

Second Case Management Discussion

- 10 The second Case Management Discussion took place on 28th May 2021 by teleconference. Mrs Hogg was in attendance on behalf of the Applicant. She was accompanied by Ms Senga Love, the managing agent for the property, as well as Mr Haq as an observer. The Respondent was not present however it was noted that he had been given notification of the date and time of the adjourned Case Management Discussion as well as instructions for joining the

teleconference. The Tribunal therefore considered it could proceed in his absence.

- 11 The Tribunal noted the Applicant's response to the Direction and asked Mrs Hogg to speak to the documents produced. Mrs Hogg explained that she had been instructed by the Applicant at a late stage in the process. Prior to that, Ms Love had been engaged as the letting agent for the property and had been corresponding with the Respondent. Mrs Hogg explained that a chronological account of said correspondence had been lodged which outlined text messages between Ms Love and the Respondent. The Respondent did not have an email address therefore communication was by text, phone or letter. The chronology detailed text messages dating back to the commencement of the tenancy in September 2019 and clarified that the Respondent had experienced difficulties with his rent payments before the pandemic. As early as inception of tenancy there were problems with the Respondent paying rent and he had defaulted on his payments almost immediately. Much of the early correspondence and messages related to attempts to engage the Respondent in payment, for example through the provision of bank details.
- 12 Mrs Hogg took the Tribunal through the relevant excerpts from the chronology. She noted that on 23rd March 2020 Ms Love had sent a text message requesting an email address so that she could signpost the Respondent to assistance with his financial situation. He did not have an email address therefore she had texted him a weblink. This was the first point at which the Respondent was provided with guidance in relation to his situation and to the rent arrears. There was then a further text message on 3rd April 2020 asking if he had managed to look into the furlough scheme and another on 28th April 2020 asking for an update and reminding him that there was help available. On 28th October 2020 Ms Love had sent a message asking the Respondent to get in touch regarding a repayment plan. A letter had subsequently been sent on 9 December 2020 with guidance on where the Respondent could seek help, including details of advice agencies. Mrs Hogg explained that the Respondent had stopped engaging as of 3 April 2020. She submitted that the Applicant had complied with the pre-action requirements on the basis that the Respondent had been signposted to assistance on at least three occasions.
- 13 The Tribunal then heard from Ms Love who explained that her firm used an online system to send texts to tenants. She advised that she had also attempted to telephone the Respondent on various occasions but he did not respond. The last contact from him was on 3rd April 2020. Ms Love confirmed that inspections of the property had been undertaken, following the required notice to the Respondent, and it did appear that he was still residing in the property. The last inspection had been carried out in November 2020 and a letter had been hand delivered to the Respondent at that time.
- 14 In response to questions from the Tribunal, Mrs Hogg reiterated that the pre-action requirements had come into force in October 2020. The majority of the correspondence between Ms Love and the Respondent predated that. Once the pre-action requirements became law, the Applicant had issued a letter to

the Respondent on 9 December 2020 with the prescribed information. Mrs Hogg advised that she would not have expected the Applicant to have continued to write to the Respondent once the application had been lodged with the Tribunal. She submitted that the Applicant had done everything required of them.

Relevant Legislation

- 15 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:-

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 12

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

(3) The First-tier Tribunal may find that the ground named by subparagraph (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 subparagraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider 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.

16 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

17 The parties entered into a Private Residential Tenancy Agreement which commenced on 7 September 2019.

18 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

19 On 12 June 2020 the Applicant's Representative delivered a Notice to Leave to the Respondent by recorded delivery mail. The Notice to Leave cited

ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 16 December 2020.

- 20 A copy of the Notice to Leave was also hand delivered by the Applicant's Representative on 10 July 2020.
- 21 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 22 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £450 per month.
- 23 As at 28 May 2021, arrears in the sum of £6750 are outstanding.
- 24 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 25 The Applicant's Representative has sought to enter payment agreements with the Respondent and has provided information on where to seek advice and assistance to address his rent arrears. The Respondent has not responded to any attempts at contact since 3 April 2020.
- 26 It is reasonable to make the order sought by the Applicant.
- 27 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 28 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to take part in the proceedings but had chosen not to do so. On that basis the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 29 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that the Notice to Leave was competent.
- 30 The Tribunal accepted that there were rent arrears outstanding in the sum of £6750, which amounted to fifteen months rent. It was apparent from the rent

statement provided that the arrears had begun to accrue shortly after the commencement of the tenancy.

- 31 The landlord's duty to comply with the pre-action requirements was also relevant to the application before the Tribunal and it therefore had to consider whether the Applicant had complied with that duty, and if not, what weight to give to any failure to comply having regard to the particular facts and circumstances of the case. The Tribunal was of the view that the Applicant had complied in part on the basis of the correspondence sent to the Respondent in December 2020 and having regard to the level of arrears, the period over which arrears had accrued and the failure on the part of the Respondent to engage since April 2020, the Tribunal considered that it would be reasonable to grant the order for eviction. The Tribunal would however suggest that the Applicant familiarises themselves with the guidance issued by the Scottish Government on pre-action requirements and ensure that any future procedures for rent management reflect the specific criteria outlined in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
- 32 The Tribunal therefore determined to make an eviction order. 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

28th May 2021

Legal Member/Chair

Date