



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 ('the Act')

Chamber Ref: FTS/HPC/EV/21/0026

Re: Property at 2 Slockavullin, Kilmartin, Lochgilphead, PA31 8QG ("the Property")

Parties:

Mr Peter McLardy, Herons Cottage, Adfern, Lochgilphead, Argyle, PA31 8QN ("the Applicant")

Mr Kris Stewart, 2 Slockavullin, Kilmartin, Lochgilphead, PA31 8QG ("the Respondent")

Tribunal Members:

Susan Christie (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction Order be granted against the Respondent in favour of the Applicant over the Property

Background

- 1 The Application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") was made, received by the Tribunal on 6 January 2021.
- 2 A Notice of Acceptance is dated 11 February 2021.
- 3 The Application seeks an eviction Order under Ground 12 to the Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act')
- 4 There is an associated application which seeks an Order for payment of the rent arrears. A written amendment of the Application to increase the sum sought to £4725 was received around 8 March 2021 then a further written amendment was requested on 22 March 2021, seeking to reduce the sum sought, after considering a further rent payment due but deducting payments made by the Respondent, to £3,750. Those were also intimated on the

Respondent. This information bears relevance in this application for the Tribunal's determination.

The Case Management Discussion

- 5 A Case Management Discussion (CMD) took place today by conference call. The Applicant participated and was represented by Mr Kemp, solicitor, with an observer Mr Buchan of the same firm.
- 6 The Respondent did not participate. A Certificate of Service of the paperwork on the Respondent by Sheriff Officer shows the service being made on 23 February 2021 by letterbox. The Tribunal was satisfied that proper intimation had been made and proceeded with the CMD in his absence, the procedure having been fair.
- 7 The paperwork submitted along with the Application was examined and discussed alongside the associated application.
- 8 The Applicant is the registered owner of the Property and landlord. It is more correctly called 2 Top Terrace, Slockavullin, Kilmartin, Lochgilphead, PA31 8QG and a typographical error in the Private Residential Tenancy referred to it as number 1, when it is number 2 and sometimes referred to as the Property address as above. All Notices, e mails and rent statements refer to the correct address number 2.
- 9 A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on or around 11 December 2017, with a start date of 12 December 2017.
- 10 The rent is £450 per calendar month payable in advance on the 12th of the month by direct debit.
- 11 A deposit of £450 was taken.
- 12 A Notice to Leave was served on the Respondent on 28 April 2020 with stated rent arrears due then of £4050. It had an associated rent statement and was emailed to the Respondent.
- 13 A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Argyle and Bute Council on 4 January 2021.
- 14 The rent account statements produced were considered and the most recent one was accepted as received by the Tribunal and reflected the oral information given by Mr Kemp and was relevant. It was copied to the Respondent.
- 15 The total sum due and owing in rent arrears is £6000. However an order for payment was made we are told by the FTT on 17 March 2020 for part of the rent arrears at £2,250 under CV/19/4070. Accordingly the balance due is £3,750 for the associated application.
- 16 From January 2020 to 12 March 2021 rent was due of £6750 less total payments received of £3000, which brings out the same balance due.
- 17 No further payments have been received.
- 18 Two Pre Action Requirement e mails addressed to the Respondent were sent in October and November 2020 and provided the necessary detail to seek engagement and signpost the Respondent to advice.
- 19 The Submission for the Applicant relies on the information contained in the Paper Apart with the application itself. There are significant arrears. There had been attempts formally and informally to ascertain the difficulty resulting

in non-payment of rent due. The applicant had personally approached the Respondent recently to try to ask, but there was no dialogue between them. As there was no engagement it was difficult to know what the problem was. If it were not for the Coronavirus regulations the mandatory ground is made out. There had been rent arrears that predated Covid-19. There had been no payment to satisfy the previous order made. It was understood a relevant benefit might be in payment and the payments that had been made came from the respondent directly. The Applicant knew of no further payments due to the Respondent that might be due as he did not know anything about his circumstances. The Applicant considered the Order sought as reasonable.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Parties on or around 11 December 2017, with a start date of 12 December 2017.
- II. The rent is £450 per calendar month payable in advance.
- III. A Notice to Leave was served on the Respondent on 28 April 2020 with stated rent arrears due then of £4050.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Argyle and Bute Council on 4 January 2021.
- V. The Pre Action Requirements have been complied with.
- VI. From January 2020 to 12 March 2021 rent was due of £6750 less total payments received of £3000.
- VII. The total arrears figure due today is £6000.
- VIII. The tenant's being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- IX. The Tribunal is satisfied an eviction Order should be made.

Reasons for Decision & Decision

The Tribunal was satisfied a Private Residential Tenancy (PRT) was entered into between the Applicant over the Property with a rent of £450 per calendar month payable in advance on the 12th of the month by direct debit. A deposit was taken of £450 as per the PRTA. The Applicant seeks an order for payment in this application for unpaid rent due to be paid up to and including 12 March 2021, less the payments made by the Respondent. This application relates to rent due and covers the period January 2020 to 12 March 2021.

As disclosed in the rent statement, the total arrears are due at a higher figure, but the Tribunal was told a previous order had been made by the FTT, as yet not paid by the Respondent. The total arrears figure due today is £6000.

A Notice to Leave was served on the Respondent on 28 April 2020 with stated rent arrears due then of £4050.

A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Argyle and Bute Council on 4 January 2021.

The Pre Action Requirements have been complied with.

The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the Discretion to be applied and had

regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It considered the information given in the application and the other documents produced, whether 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 and whether it is reasonable to issue an eviction order against the tenant, and to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order. It was satisfied they had been complied with. The rent arrears have occurred over a long period of time. It considered 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, which it did not appear to be. There had been no proposal for payment. The Tribunal was satisfied an Order should be made today and it was reasonable to do so. The decision is 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.

Susan Christie

Legal Member/Chair

24 March 2021
Date