



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/21/0200

Re: Property at 41 Lyon Street, Dundee, DD4 6RD (“the Property”)

Parties:

Mr Abdul Chowdhury, 47 Park Road, Dundee, DD3 8BL (“the Applicant”)

Mr Daniel Nadolski, G/R 41 Lyon Street, Dundee, DD4 6RD (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Currie (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 hearing in relation to the application by the Applicant for an order for eviction of the Respondent who is the tenant in the Property.
2. The following documents were lodged with the Application or shortly thereafter namely:-
 - a. Tenancy Agreement dated 31st January 2020
 - b. Notice to Leave dated 17th July 2020
 - c. Evidence of service by recorded delivery of the Notice to Leave
 - d. A copy of the track and trace evidencing receipt dated 18th July 2020
 - e. Rent statement dated to 30th January 2021
 - f. 3 copy letters from Balgay Property and Investment Services to the Respondent dated 10th March 2020, 26th March 2020, and 11th June 2020 requesting payment of rent arrears.
3. The Applicant is Mr Abdul Chowdhry the son of the late Landlord and the executor of his father’s estate and currently acting Landlord. He is now the registered landlord of the Property
4. In response to a request from the Tribunal the Applicant’s representative advised in a letter of 9th April that they had contacted Balgay Property Investment Services which they advised is a very small company with one

employee who was unaware of the Pre-action protocols and they did not follow the requirements in terms of the Covid Regulations but suggested that sufficient correspondence was previously sent to the Respondent concerning the arrears and referred in particular to the letter dated 11th June 2020. The letter from the solicitors also suggested that the Respondent has not made any attempt to repay the outstanding arrears especially after being served with this application.

5. The Tribunal held a case management discussion on 20th April 2021 and the note on this is referred to for its terms.

The following issues were identified and a direction sent requesting information requesting:-

“The Applicant is required to provide:

1. *A note of what attempts were or are being made to contact the Respondent by the Applicant over and above the 3 letters written last March and June. To provide copies of any letters or e-mails sent to the Respondent regarding offering any assistance or inviting him to discuss the rent arrears.*
2. *To confirm if the Respondent been offered any opportunity to come to an arrangement to pay the arrears?*
3. *To confirm if the universal credit payment are being paid direct to the landlord*
4. *To advise what impact do the arrears alleged outstanding have on the Applicant*
5. *To submit the reasons why, if the Arrears are found to be proven, the Applicant considers it is reasonable to grant an order of eviction?*
6. *The Applicant also needs to lodge the S11 notice served on the local authority and evidence of its service or receipt by the local authority*
7. *To provide a list of witnesses that the Applicant wishes to bring to the Hearing. The Tribunal expects the Applicant, at least, to be at the hearing and provide evidence.*

The Respondent requires to provide:-

1. *the Respondent should advise if he accepts the arrears are due and owing to the Applicant.*
 2. *The Respondent has not made any contact or representations to date if he does not accept the arrears are due and owing or wishes to make representations about whether an order to evict would be reasonable he requires to make written representations or attend the hearing and make oral representations.”*
6. The Applicant’s solicitor responded on 28th April 2021 advising that the only witness they would be bringing to the hearing would be Mr Colin Campbell of Balgay Property Investments. They also provided a copy S11 notice and copy e-mail sending it to Dundee city Council dated: In response to the rest of the direction they advised that
 - a. Balgay Properties made numerous phone calls and texts to the Respondent without any response and that they heard from the council that the Respondent had contacted them for assistance but that he was avoiding the letting agent;

- b. Balgay Properties had confirmed that they arranged for universal credit to be paid direct to the landlord;
 - c. that the Applicant's main income is derived from rental payments and any missed rental payment has a detrimental impact on his financial position;
 - d. that as the tenant has made no effort to pay the rent and a number of repairs have been reported that make them consider the tenancy is being conducted in an unsatisfactory manner that therefore the eviction is justified.
7. The Respondent did not respond.

The Hearing

8. The Hearing was held on 9th June 2021 by teleconference in view of the continued need for social distancing at the current time. Mr Alex Campbell of Campbell Boath Solicitors attended for the Applicant who was not present. The Respondent did not attend nor was he represented. Mr Colin Campbell of Balgay Properties was called and attended as a witness for the Applicant.
9. The Legal Member explained the nature and purpose of the Hearing and asked Mr Campbell to explain what he was seeking. He confirmed that as per the application his client was seeking an order for eviction of the tenant, He confirmed that arrears of rent having accrued since 29th February 2020 and that there was over 3 months' rent due and owing but this has not increased recently because the rent is currently being paid directly through universal credit for the full amount. He confirmed that after the CMD on 20th April and in response to a query from the Tribunal about whether the tenant was living in the Property as certain letters had been returned he had gone out to the Property himself and spoke to the Respondent who advised the solicitor that he himself would like to move out as the house was not entirely suitable for his needs. In particular Mr Campbell advised the tenant said he had custody of a young daughter, the flat only had one bedroom and the door to that was off the kitchen so he did not find the layout suitable and had been in touch with the council about another house. .
10. Mr Campbell advised he asked the Respondent to contact the letting agent with regard to the rent arrears but understands there has been no contact and nothing further paid.
11. The clerk then contacted the witness and Mr Colin Campbell of Balgay Properties joined the call.
12. Ms Colin Campbell advised under questions that he was the property administrator at Balgay Properties, that the rent outstanding was currently £1975 and that the rent was being paid since August 2020, in full from universal credit which they had asked to be paid directly after finding out from Dundee City Council that the Respondent was receiving universal credit. He advised that at the start of the lease he had checked and the Respondent had been employed but he also confirmed they had not been advised by the Respondent of any change in his circumstances.
13. Mr Colin Campbell advised that they had tried to contact the tenant on numerous occasions by phone and text with no response and also tried to

visit him but there had been no answer even though he said movements could be heard inside the Property. In his view this was a deliberate attempt not to speak to them or come to an arrangement to pay.

14. Mr Campbell also advised there were certain repairs that had to be carried out that did not seem to be ordinary wear and tear such as a door coming off the washing machine, holes in the floor where he said the tenant advised rats had got in and locks no longer working. He confirmed all the repairs had been carried out but thought the tenancy was not being looked after properly.
15. Mr Alex Campbell then summed up advising that the grounds were met in that over 3 months' rent was due and outstanding; that the Respondent had not responded to any of the numerous attempts by the letting agent to contact him and explained that the letting agents were a small business who had been unaware of the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 but had made considerable efforts to contact the Respondent. Mr Campbell also confirmed that from his own conversation with the Respondent he believed the Respondent wished to move to another Property and that it was therefore reasonable to grant the eviction.

Findings in Fact

16. The parties entered into a lease of the Property which commenced on 31st January 2020.
17. The Rent due in terms of the lease is £390 per calendar month payable in advance
18. The tenant is still living in the Property
19. The Applicant produced a statement of rent showing that the first rent was paid and then since 29th February 2020 no further rent was paid until August 2020 when rent was paid direct to the Landlord by universal credit
20. There was over 3 months' rent outstanding at the date of service of the Notice to Leave and at today's date. .
21. As at the date of the Application and today's date £1975 of rent is due and owing. The current rent payments are being paid directly to the Landlord from universal credit.
22. A notice to leave was served on the Respondent on 17th July 2020 by recorded delivery confirming that no proceedings would be raised before 17th January 2021
23. These proceedings were raised on 27th January 2021 and the application included a copy of the Notice to Leave.
24. The Respondent has not responded to any attempts to contact him to discuss payment of the arrears.

Reasons

25. The Tribunal notes that in terms of the tenancy agreement the monthly rent due is £390. In terms of the Rent statement rent was not paid from 29th February 2020 to 30th July 2020. Thereafter a payment of £365 was paid in July/august with further payments of the full rent of £390 made from

August/September to date all from universal credit. This leaves a balance due according to the rent statement of £1975 the same balance due as at the date of service of the Notice to Leave.

26. The ground of action under Ground 12 is now that
 - a. "Rent Arrears – It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months –
 - i. The First Trier Tribunal may find that the ground named by sub-paragraph (1) applies if –
 - b. For three or more consecutive months the tenant has been in arrears of rent and
 - c. *The Tribunal is satisfied that it is **reasonable** on account of that fact to issue an eviction order.*
 - d. *In deciding under sub-paragraph 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."*
27. The Tribunal requires to be satisfied that it is reasonable to grant an order for eviction before it grants such an order. In addition in terms of the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 the Tribunal should take account of what the landlord has done to comply with that in regarding what is reasonable.
28. The Notice to Leave was dated 17th July and served on same date it requires the tenant to leave by 17th January 2021. The Notice to leave does not allow time for posting however the Tribunal notes that paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 entitled Errors in Notices means that a notice is not invalid by reason of an error in the notice so long as the landlord relying on it does not seek an order for possession until the date it could have been relied upon had it been correctly completed. In this case the application was made after the date that should have been inserted in the Notice to Leave and therefore the Tribunal accepts this meets the requirements of paragraph 10.
29. The Tribunal noted that a S11 notice has now been duly served on Dundee City Council and so was satisfied the application is competently made and from the evidence given in writing and orally that there are rent arrears of over 3 months and that there has been no attempt by the Respondent to pay these.
30. The Tribunal then considered whether or not it would be reasonable to grant the order of eviction. The Respondent has not made any representations nor has he attended either the CMD or this Hearing so there is nothing for the Tribunal to consider directly in respect of the Respondent's views and nothing put forward to suggest it would be unreasonable to grant the application. Although the Applicant's letting agent had not been aware of the Pre Action Protocol requirements and has not followed them directly they have made informal attempts to contact and offer support to the Respondent. They have when requested attended to repairs as and when brought to their attention. The Applicant's solicitor has advised that he has spoken directly to the Respondent and as noted above the Respondent is content to move and be rehoused due to issues with the size and layout of the Property.
31. The Respondent has been afforded the opportunity to attend the Hearing and has not done so nor has he made any written representations disputing the

facts or providing reasons why it would not be reasonable to grant the order for possession.

32. Taking all of the circumstances into account the Tribunal considers on balance that it is reasonable to grant the application and grants the order for possession.

- 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.

Jan Todd

9th June 2021

Legal Member/Chair

Date