



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/22/1637

Re: Property at 27 Poplar Street, Dalkeith, EH22 5LW (“the Property”)

Parties:

Mrs Beata Czochra, Mr Arthur Czochra, 23/1 Stenhouse Gardens North, Edinburgh, EH11 3EN (“the Applicant”)

Mr Michal Geisler, Mrs Ewa Geisler, 27 Poplar Street, Dalkeith, EH22 5LW (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 26 May 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 September 2018;
3. Notice to Leave dated 2 April 2022;
4. Section 11 Notice to Local Authority;
5. Rent Arrears Statement as at 23 May 2022;
6. Updated Schedule of Rent Arrears as at 9 September 2022.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 29 June 2021. The Applicants participated and were represented by their Letting Agent. The First Respondent did not participate. The Second Respondent participated and represented both Respondents.

The Applicants' Representative had produced a Schedule of Rent Arrears as at 1 September 2022. It disclosed that the amount of arrears had increased to £6,700.

The Applicants' Representative informed the Tribunal that her instructions were to seek the eviction order.

The Second Respondent stated that the arrears were correct, both Respondents were working full time, they had a 12 year old son and could not afford to pay the current rent or make any payment towards the arrears. No vulnerabilities or other issues were raised by the Respondent.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Tribunal then considered the documentary evidence it had received from the Parties and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 1 September 2018;
2. The monthly rent was £750;
3. Notice to Leave had been served on the Respondent on 2 April 2022;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent in the sum of £4,800 and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of £6,700;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. It was reasonable to issue an eviction order in the circumstances.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

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.

Alan Strain

29 September 2022

Legal Member/Chair

Date