



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

Chamber Ref: FTS/HPC/EV/22/1665

Re: Property at 22A King Street, Coatbridge, ML5 1JE (“the Property”)

Parties:

Mr George Sinclair Watt, 40 Carlton Place, Glasgow, G5 9TS (“the Applicant”)

Mr David John Dawson, 22A King Street, Coatbridge, ML5 1JE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 26 May 2022 the Applicant’s representatives Happy Lets Ltd, Hamilton, applied to the Tribunal for an order for eviction of the Respondent from the property arising from alleged rent arrears in respect of the Respondent’s tenancy of the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement together with a rent schedule, Notice to Leave with proof of service, Section 11 Notice and copy correspondence in support of the application.
2. By Notice of Acceptance dated 21 June 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 29 July 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 13 September 2022. The Applicant did not attend but was represented by Mrs Lesley Barclay from the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD having been given to the Respondent determined to proceed in his absence.
5. Mrs Barclay explained that the tenancy had commenced on 26 September 2020 at a rent of £425.00 per calendar month. She said the Respondent had fallen into arrears in August 2021 and no rent had been paid since. She explained that as the Respondent had been in receipt of Universal Credit attempts had been made to have rent paid direct but that the Respondent had not agreed to this. She said that the current amount of rent now due by the Respondent amounted to £5525.00. Mrs Barclay said that as far as she was aware the Respondent continued to reside in the property and was confident that the Respondent's downstairs neighbours would have told her if he had left as he had displayed some anti-social behaviour towards them. He had also said in the past that he would not move out until Sheriff Officers evicted him.
6. Mrs Barclay confirmed that several pre-action emails had been sent to the Respondent and referred the Tribunal to emails dated 16 March, 20 April and 17 May 2022.
7. Mrs Barclay confirmed that a Notice to Leave had been sent to the Respondent by recorded delivery post on 20 April 2022 and referred the Tribunal to the certificate of receipt submitted with the application.
8. Mrs Barclay confirmed that a Section 11 Notice had been sent to the local authority by email on 26 May 2022.
9. Mrs Barclay advised the Tribunal that the Respondent was single, aged 39 with no children. She confirmed the flat was on the first floor and had not been modified. She went on to say that the Applicant had multiple properties and owned his own business. There was a mortgage on the property. She said he had concerns regarding the anti-social behaviour being experienced by the lady in the flat below. He also had other properties in the street and wished to maintain his good reputation as a landlord. She submitted there was a high level of rent arrears and it was reasonable that the order should be granted.

Findings in Fact

10. The parties entered into a Private Residential Tenancy Agreement that commenced on 26 September 2020 at a rent of £425.00 per calendar month.
11. The Respondent has not paid any rent since 29 July 2021.

12. The rent due as at the date of this application, 26 May 2022, amounted to £4250.00 and has increased to £5525.00.
13. The Respondent was sent pre-action emails dated 16 March, 20 April and 17 May 2022.
14. The Respondent was served with a Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act sent by recorded delivery post on 20 April 2022 and delivered on 21 April 2022.
15. A Section 11 notice was sent to North Lanarkshire Council by email on 26 May 2022.
16. The Respondent lives alone in the property.
17. The Applicant's representatives have received complaints of anti-social behaviour involving the Respondent.
18. The Applicant owns multiple rental properties.
19. The property is subject to a standard security.

Reasons for Decision

20. The Tribunal was satisfied from the written representations, the documents produced and the oral submissions by Mrs Barclay that the parties entered into a Private Residential tenancy that commenced on 26 September 2020 at a rent of £425.00 per calendar month. The Tribunal was also satisfied that the Respondent has not paid any rent since 29 July 2021 resulting in a balance outstanding as at the date of application namely 26 May 2022 in the sum of £4250.00. The Tribunal was further satisfied that this had increased to £5525.00 as at the date of the CMD.
21. The Tribunal was satisfied that the Applicant's representatives had satisfied the requirements of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending emails to the Respondent on 16 March, 20 April and 17 May 2022.
22. The Tribunal was also satisfied that the Notice to Leave sent to the Respondent by recorded delivery post on 20 April 2022 was procedurally correct in its terms and was valid as was the Section 11 Notice sent to North Lanarkshire Council.
23. The Tribunal was therefore satisfied that as at the date of service of the Notice to Leave the Respondent had been in arrears of rent for at least three months and as at the date of the CMD more than one month's rent was outstanding. Were it not for the terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Recovery and Reform) (Scotland) Act 2022 the Applicant would be entitled to an order for eviction. However before granting such an order the

Tribunal is required to consider in terms of the foregoing legislation whether it would in all the circumstances be reasonable to grant the order.

24. In reaching its decision the Tribunal has considered the very substantial level of rent arrears, the lack of engagement by the Respondent, the failure of the Respondent to agree to rent payments being paid from Universal Credit to the Applicant, the fact that the Applicant has a mortgage to pay on the property, that there have been complaints by neighbours of anti-social behaviour on the part of the Respondent and that the Respondent lives in the property alone. Taking everything into consideration the Tribunal is satisfied that it should exercise its discretion in favour of the Applicant and grant the order.

Decision

25. The Tribunal having carefully considered all the information before it and being satisfied it had sufficient information to allow it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

26. 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.

**Graham Harding
Legal Member/Chair**

**13 September 2022
Date**