



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/22/3048

Re: Property at 95 Wylie Crescent, Cumnock, East Ayrshire, KA18 1LT (“the Property”)

Parties:

CFIC Holdings Limited, 13/1 Drumsheugh Gardens, Edinburgh, Midlothian, EH3 7QG (“the Applicant”)

Mr Reece Rutherford, 95 Wylie Crescent, Cumnock, East Ayrshire, KA18 1LT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ann Moore (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 should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant's agent CKD Galbraith LLP on 25 August 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement between the parties over the property commencing on 19 October 2021.
 - b. Tenancy rent statement for the period from 19 October 2021 to 1 August 2022.
 - c. Housing Benefit award notification.
 - d. Authorisation letter by Applicant for agent.
 - e. Written representations from CKD Galbraith LLP to FTT dated 24 October 2022
 - f. Email and letter chain from CKD Galbraith LLP to the Respondent and answers from the Respondent's mother between 9 June 2022 and 12 August 2022.
 - g. S 11 notice to the Local Authority sent 24 August 2022

- h. Notice to Leave to Respondent dated 17 June 2022 stating as the date on which proceedings can first be raised 18 July 2022.
 - i. Email sending same to Respondent dated 17 June 2022.
3. The case documents are referred to for their terms and held to be incorporated herein.
 4. On 19 December 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 5. No formal representations were received from the Respondent.

B: Case Management Discussion

1. The Applicant's representative Ms Douglas attended the CMD. The Respondent did not take part in the teleconference call.
2. The legal member explained the purpose of the CMD.
3. Ms Douglas explained that the arrears had now increased to £2,840.48. The Housing Benefit payments showing in the award notification were never paid to the landlord by the tenant and after Galbraith's applied for the Housing Benefit payments to be paid directly to the landlord this has now been in place since October 2022 but there has been no attempt of the Respondent to address the arrears. The difference between the payment due date on the PRT and the rent statement reflects the change mutually agreed by both parties on 22 November 2021 at the request of the tenant to change the payment date from the 19th of the month to the first of the month. This was reflected in the pro rata payment of 22 November 2021. Thus the rent is now due monthly in advance on the first day of the month. The arrears, when taking into account the £200 credit on the account present before 1 March 2022 covered 16 days of the March rent and on 17 March 2022 the tenant was in actual arrears of rent, not just owing rent. The Notice to Leave was then served on 17 June 2022 after three full months of arrears were in place. The respondent is a single man and the most recent contact with him was in December 2022 when entry was required for a plumber. At that stage the property appeared to be "totally trashed". The landlord's agents had helped the Respondent to apply for Housing Benefit and he did not pass on the payments. The landlord had been very patient and supportive with the Respondent and would have been content with a payment proposal regarding the arrears but nothing had been forthcoming. The Applicant is seeking an eviction order.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 19 October 2021.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.

4. The monthly rent of £375 is payable on the 1st day of the month and monthly in advance as per clause 2 of the tenancy agreement and the changes in the payment date agreed by both parties on 22 November 2021.
5. Rent arrears of £2,050.00 accrued as shown in the Rent Statements submitted for the period of up to and including 1 August 2022 and are still outstanding for that period.
6. As at 15 February 2023 the amount due for payment by the Respondent to the Applicant is £2,840.48.
7. The Respondent has been in arrears of rent since 17 March 2022 and thus for a period exceeding 3 months at the time the notice to leave was served and is now in arrears of rent representing more than 7 months rent.
8. The Applicant had provided the Respondent with the opportunity to resolve the matter.
9. The Respondent is a single male residing in the property with no dependent children or family members.
10. The notice to leave gave the correct notice period and was served on 17 June 2022 by email.
11. The rent arrears are not a consequence of delay or failure of payment of relevant benefits. Housing Benefit is in place.
12. The Applicant, through his agent, had assisted the Respondent in applying for Housing Benefit.
13. The Housing Benefit payments detailed in the notification of award were not paid over by the Respondent to the Applicant.
14. Housing Benefit has been paid directly to the Applicant since this was arranged by the Applicant's agent in October 2022.
15. No attempt to clear the arrears was made by the Respondent.
16. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

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 or must 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.

Grounds under Schedule 3 of the 2016 Act

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

F26(2).

(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—

[F27(a)] 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 **[F28]**, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.]

(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.

[F29(6) Regulations under sub-paragraph (4)(b) may make provision about—

- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
- (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
- (c) such other matters as the Scottish Ministers consider appropriate.]

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the application, the notice to leave and rent statement. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Ms Douglas on behalf of the Applicant.

4. In The Tribunal considered the validity of the Notice to Leave, given the Upper Tribunal decision *Majit v Gaffney* [2019] UT 59 by Sheriff Fleming, which confirmed that at the date the Notice to Leave is served the ground for eviction has to be met. The decision contains the following statement in para 9: "The tenant must have been in arrears for the specified period of time, not simply owing rent." The Tribunal considered that because there had been a £200 credit on 28 February 2022, the actual arrears of rent would only start once that amount had been applied pro rata to the March rent. On that basis the Tribunal was satisfied that the rent arrears period commenced on 17 March 2022 as the rent for this day was not longer covered by the £200. This resulted in the arrears being in place for a continuous period of 3 months for the period of 17 March-16 April, 17 April - 16 May and 17 May-16 June 2022. 17 June 2022 was thus the first day on which the Notice to Leave could be served. In terms

of S 54 of the Act a 28 day notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (3) of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since November 2021. The Tribunal was satisfied that in terms of Ground 12 the Applicant has complied with the pre action requirements by sending various letters and emails to the Respondent, assisting him in his application for Housing Benefit and seeking proposals for a resolution. No payments apart from the Housing Benefit payments after the payments started to be made directly to the landlord have been received and the Respondent has not engaged with the Applicant to resolve the matter. The Respondent has not paid over Housing Benefit awards made to him, which were shown in the documentation but had retained the funds. The Applicant had been patient and supportive of the Respondent and the Respondent simply did not engage in resolving the matter of rent arrears. Even after the Notice to Leave the Respondent did not propose a payment plan and he has not provided a proposal for payment since the application was made.

6. The Respondent has not provided any updates regarding his situation and had ignored all correspondence sent to him regarding rent arrears. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no dependent children living with him. No specific needs of the Respondent to live at the specific address have been raised. He has not provided any information advising of problems accessing suitable alternative accommodation.

7. The Respondent has not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. The Housing Benefit award has been evidenced and benefits are in place. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent. The arrears have now increased to £2,840.48, which is equivalent to more than 7 months rent.

8. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of significant and persistent rent arrears and attempts of the landlord to engage the tenant in efforts to find assistance and address the arrears. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

9. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

10. As the Notice to Leave was served on 17 June 2022 and the application received by the Tribunal on 25 August 2022, the application is not affected by the provisions of schedule 2 of the Cost of Living (Tenant Protection) (Scotland) 2022. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 18 March 2023.

E : Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act

F: 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.

**Petra Hennig McFatrige
Legal Member/Chair**

**15 February 2023
Date**

P. Hennig McFatrige