



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/22/3336

Re: Property at 34 Pine Court, Cumbernauld, G67 3AY (“the Property”)

Parties:

Ms Julia Fielden, 2a Westmount Park, Newtonards, Co Down, BT23 4BP (“the Applicant”)

Mr Garry Gordon Burns, 34 Pine Court, Cumbernauld, G67 3AY (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Linda Reid (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided a copy of the Private Residential Tenancy Agreement between the parties, a Notice to Leave and proof of service, Notice under section 11 of the Homelessness (Scotland) Act 2003 to the local authority and a rent statement.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 17 May 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 17 May 2023. The Applicant was represented by Mr John McAuley of Ennova Law. She was not present. The Respondent was in attendance.
- 4 The Tribunal explained the legal test and asked parties to address the Tribunal on their respective positions regarding the matter.
- 5 Mr McAuley commenced by apologising for the late submission on documents earlier that morning. He confirmed that he had submitted an updated statement of account and two pre-action requirements letters that he had sent to the Respondent following the raising of the proceedings. The Applicant was seeking an eviction order. Mr McAuley's understanding was that the Respondent had been seeking alternative accommodation but that could not be progressed until an eviction order was granted. Mr McAuley confirmed that a Notice to Leave had been served on the Respondent on 27 July 2022 and the proceedings had been raised 84 days after that. The rent arrears had gradually increased over a period of time and currently stood at £5604.53. However the Respondent's universal credit would be applied to the rent account towards the end of May so the balance would likely decrease by around £390.
- 6 Mr Burns confirmed that he had seen the pre-action letters and could state that he had received them. He also agreed with the figure quoted by Mr McAuley in terms of the current balance of arrears. Since moving into the property he had experienced some issues with his finances and his mental health. He would be happy for the eviction to move forward. He had been in talks with local housing providers however due to the amount of rent arrears he had not been able to commit to an arrangement, nor had he been able to obtain housing. He had been told that the eviction order would help him get somewhere else and it would allow the Applicant to move a new tenant in. He was more than happy for that to happen. He would then look to put a realistic payment arrangement in place. The Respondent confirmed that he currently receives payments of universal credit which amounted to £390 per month towards his rent. He had sought support for his mental health issues and he had put in an application for discretionary housing payment. This had been successful and he expected to receive £194 approximately every four weeks, with a backdate of around 8 to 10 weeks. The Respondent confirmed that he had spoken with Mr McAuley after receiving the pre-action requirement letters to try and sort something out. Mr McAuley confirmed that the Respondent had been good at making contact to try and come to an arrangement, either to proceed with eviction or sort out payment of the arrears.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus

(Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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 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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

- (ii) an eviction ground, or grounds, mentioned in paragraph (a)*
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
- (b) that the tenant has a relevant conviction, [ground 13]*
- (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
- (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*
- (3C) This subsection applies if—*
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (i) that the landlord intends to live in the let property, [ground 4]*
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
- (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
- (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
- (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

62 Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—*
- (a) is in writing,*
- (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*
- (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
- (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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

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

- 8 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application. For the avoidance of doubt the Cost of Living (Tenant Protection) (Scotland) Act 2022 is not relevant to this application, which was received by the Tribunal prior to 28 October 2022.

Findings in Fact and Law

- 9 The parties entered into a Private Residential Tenancy Agreement which commenced on 9th March 2022.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £575 per calendar month.
- 12 On 27 July 2022 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 25 August 2022.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

- 14 As at the date of service of the Notice to Leave arrears in the sum of £1725 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £5604.53 were outstanding.
- 16 The Respondent receives housing benefit of approximately £390 per month which is paid directly to the Applicant.
- 17 The Respondent is in receipt of support for his mental health issues and has made an application for discretionary housing payment.
- 18 The Respondent wishes to move on to a new property. The Respondent has sought assistance in doing so.
- 19 The Respondent does not object to the making of an eviction order.
- 20 It is reasonable to make the order sought by the Applicant.
- 21 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 22 The Tribunal was satisfied that it had sufficient information upon which to make a decision following the hearing having heard evidence from the parties and having considered the written representations lodged.
- 23 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 24 The parties were in agreement as to the balance of rent arrears which stood at £5604.53. On that basis the Tribunal was satisfied that ground 12 had been in part met, in that rent had gone unpaid for three or more months and there was at least one month's rent arrears outstanding as at the date of the Case Management Discussion.
- 25 The Tribunal therefore considered the question of reasonableness. The Tribunal noted that the relationship between the parties was an amicable one and it was clear that the Applicant had endeavoured to support the Respondent in finding a resolution to his situation. The Respondent had stated that he had sought support for his mental health and was actively seeking rehousing. He was content for an eviction order to be granted to assist him with this. The Tribunal also had cognisance of the rent arrears which were significant and the

Respondent did not dispute these were due, albeit there may be a backdated payment of discretionary housing payment that would reduce them further.

- 26 Having identified the above as relevant to the question of reasonableness the Tribunal considered the particular facts and circumstances of this case. Ultimately the Tribunal was satisfied that it would be reasonable to make an eviction order based on the level of arrears and the position put forward by the Respondent, primarily that he was happy for the eviction to proceed.
- 27 The Tribunal therefore made an eviction order against the Respondent. 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.

Ruth O'Hare

Legal Member/Chair

17th May 2023
Date