



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/22/2462

Re: Property at 103 Greenock Road, Inchinnan, PA4 9LD (“the Property”)

Parties:

O'Brien Properties Ltd, O'Brien Properties, 4-5 Gleneagles Court, Brighton Road, Crawley, RH10 6AD (“the Applicant”)

Mr Thomas Walker, 103 Greenock Road, Inchinnan, PA4 9LD (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 22 July 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 7 March 2020 at a rent of £625 per month, a Notice to Leave, dated 18 January 2022, with proof of delivery, advising of the Applicant’s intention to apply for an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application would not be made before 21 July 2022. They also provided a Rent Statement to 7 August 2022 showing rent arrears of £4,725.

The Applicant also provided evidence that the Rent Arrears Pre-Action Requirements (Coronavirus) Regulations 2020 had been complied with, namely copies of letters sent to the Respondent on 9 November and 7 December 2021, which confirmed the arrears, indicated willingness to work towards a Payment Plan and signposted the Respondent to sources of help and assistance.

On 29 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 20 December 2022.

On 27 December 2022, the Respondent made written representations to the Tribunal, in which he stated that he wished to come to an agreement to keep the Property. He described a number of health issues, which were being managed by Clydeview Health Centre. He had recently secured a self-employed contract in England on a MOD base until November/December 2023. He stated that he had been unable to pay the rent due to the COVID-19 pandemic and the closing of contracts, as well as his health issues. His only income had been a Government Pension and a private pension. He was trying pay as much as he could afford towards bills. He provided the Tribunal with a copy of s Self-Employed Agreement for Services at RAF Coningsby, dated 1 December 2022.

On 29 December 2022, the Applicant's letting agents, Penny Lane Homes, Renfrew, copied to the Tribunal an email to the Respondent in which they said that the Applicant was not prepared to retract the Notice to Leave. The Applicant had given the Respondent time to resolve the arrears since they began in October 2020 and did not trust him to stick to his word, as he had not done so in the past.

On 7 January 2023, the Respondent provided the Tribunal with a copy bank statement showing the amounts he had paid towards the rent. This tied in with amounts shown on an updated Rent Statement provided by the Applicant's letting agents on 17 January 2023, which showed arrears at that date of £5,500. £1,000 had, however, been paid in November 2022 and £650 in December 2022.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 24 January 2023. The Applicant was represented by Mr Ian Troy of Penny Lane Homes, Renfrew. The Respondent was also present.

The Respondent explained to the Tribunal that he was now working on a self-employed basis at RAF Coningsby. Prior to the pandemic, he had been a self-employed sole trader working as clerk of works on contracts in Scotland. All of these contracts closed down during the pandemic. He had contracted COVID-19 in December 2020 and at that time had been diagnosed with asbestosis, pleural plaques and angina, These conditions were all being managed by medication. When he had tried to get back on contracts post-lockdown, he had found that main contractors were using their own people rather than employing outside contractors like himself, so he had been effectively out of work for over 2 years. He had not received any State Benefits apart from a Government Grant that was made available to self-employed people.

The Respondent confirmed that he lives in the Property on his own. He also advised that he is currently paying down an outstanding tax bill, which he hoped to clear in the next 8-10 months and was willing to come to an agreement to reduce the rent arrears. He hoped to be able to clear them completely in 2-3 months. He told the Tribunal that he is also, by way of salary deduction, paying rent for accommodation at his present place of work in Lincolnshire. He is in communication with Trustees Scotland and with Citizens Advice, Paisley.

Mr Troy told the Tribunal that there had been previous agreements in place to reduce the arrears, but the Respondent had failed to honour them. He had suggested to the Respondent that he was simply not able to afford the rent for the Property, a two-bedroom flat, and that he should look for a more affordable one-bedroom property. He told the Tribunal that his concerns were even greater, having now heard that the Respondent is paying rent for another property down south.

The Parties then left the Case Management Discussion and the Tribunal members considered all the evidence, written and oral, before them.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 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, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Respondent had been in rent arrears for three or more consecutive months and that the current arrears exceeded one month's rent. No evidence was provided to suggest the arrears were in any way a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the Pre-Action requirements had been met.

Accordingly, the question for the Tribunal to determine was whether it would be reasonable to issue an Eviction Order.

The Tribunal noted the comments of the Respondent as to the reasons for the arrears having arisen and understood the difficulties that he would have faced during and after the pandemic lockdown. The Tribunal also noted that he had been paying something towards the rent most months, but, apart from the payments of £1,000 in November 2022 and £650 in December 2022, his payments had always been less than the monthly rent, so the arrears had continued to increase. The Respondent had also told the Tribunal that he was in the process of reducing a tax bill and was also paying rent for another property. The Tribunal did not think, given the evidence before it, that there was a realistic prospect of his clearing the arrears in the 2-3 month period that he had indicated. The Respondent expects to be working at RAF Coningsby until at least November 2023 and is paying rent for a property in that area, as well as being liable for the ongoing rent for the Property and trying to pay down a tax bill. These factors are bound to put a very significant strain on his finances.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order against the Respondent.

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.

George Clark

Legal Member/Chair

24 January 2023
Date