



Decision 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/22/3039

Re: Property at 1 Brackla Cottages, Nairn, IV12 5QY (“the Property”)

Parties:

The Trustees of the Cawdor Scottish Discretionary, Cawdor Estate, Estate Office, Cawdor, Nairn, IV12 5RE (“the Applicant”)

Ms Michelle Lynn Matthews and Mr Benjamin Thomas Matthews, 1 Brackla Cottages, Nairn, IV12 5QY (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 1 Brackla Cottages, Nairn, IV12 5QY under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 24 and 25 August 2022, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties commencing 8 February 2019, a rent increase notice dated 19 November 2019, various emails between parties from 14 March – 4 May 2022, a rent statement, a copy letter dated 27 January 2022, a Notice to Leave dated 27 January 2022 with Track and Trace Royal Mail receipts and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Highland Council dated 24 August 2022 with covering email.
3. On 21 September 2022, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 9 November 2022 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 30 November 2022. The Tribunal advised parties on 10 November 2022 that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 12 December 2022. This paperwork was served on the Respondents by Robert White, Sheriff Officer, Inverness on 10 November 2022 and the Executions of Service was received by the Tribunal administration.
5. Neither Respondent made any written representations by 30 November 2022.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 12 December 2022 by way of teleconference. Mr Johnston from Harper MacLeod, solicitors appeared on behalf of the Applicant. Both Respondents appeared on their own behalf. The case was heard together with an arrears case under reference FTS/HPC/CV/3041.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties commencing 8 February 2019, a rent increase notice dated 29 November 2019, a copy letter dated 27 January 2022, a Notice to Leave dated 27 January 2022 with Track and Trace Royal Mail receipts, email correspondence between Rachel Bromby, the Applicant’s agent and the Respondents from 14 March – 4 May 2022, a rent statement to 19 August 2022 showing arrears of £10 970, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Highland Council dated 24 August 2022. The Tribunal considered these documents.
8. Mr Johnston moved the Tribunal to grant an Order for eviction. With reference to the Notice to Leave served on 27 January 2022 the arrears were £5895. This also showed that the Applicant could raise an application after 31 July 2022. That period had passed and the application was lodged on 24 August 2022. The tenancy agreement the Tribunal noted that in terms of Clause 7

the Respondents had agreed to pay rent of £710 per month. Mr Johnston referred to the rent increase notice which took effect from 1 March 2020 increasing the rent to £725 per month. With reference to the rent statement, he submitted that there had been no payments to rent since December 2021. Arrears had increased since the application had been lodged and were continuing to increase.

9. He submitted it was reasonable to evict as the arrears had accrued over a lengthy period of time and were substantial, sitting at £13 870. Pre-action the applicant had tried to get the Respondents to come to an arrangement to pay the arrears. The emails lodged showed that the Respondents were intending to vacate the Property, but had not done so. They had suggested they would make arrangements to pay the arrears, but that had not happened. Mr Johnston appreciated there was a 6 year old child in the Property. He submitted however that the Respondents had had time to find alternative accommodation. They had highlighted the fact that the Respondents had children to Highland Council when they lodged the Section 11 Notice. He had not heard anything from the Council however.
10. In response Mr Matthews explained he and Mrs Matthews were separated and were no longer living together. He was working away from home throughout the country and was living with friends and family. He candidly admitted they owed arrears of £13 870. They had got themselves into financial difficulties and their financial position was worsening. It was easier to ride the storm and he felt they had buried their heads in the sand. The Tribunal pointed out that his emails of 23 March and 26 April 2022 stated they would be vacating the Property. Mr Matthews explained that things had changed due to the Respondents' separation and that was not now possible.
11. Mrs Matthews also stated she agreed with Mr Matthews and admitted the arrears of £13 870. She added that she worked as a carer for 24 hours per week and that they struggled to pay their bills. She had consulted with the Citizens Advice Bureau who had helped with advising on bills and had advised that the Homeless Team at Highland Council could not really assist until an order to evict had been granted. They had a 6 year old daughter and a 16 year old son who had attended the local secondary school since 1st year. He was due to leave school at the end of term just before Christmas. In response to questioning by the Tribunal she did not know whether she would be rehoused by the Council. There were no health or disability issues and she had now applied for Universal Credit.
12. Mr Matthews added that he would like to make a repayment plan, but accepted they had not made any offer to the Applicant despite the emails that had passed with the Applicant's agent. It had now gone beyond the stage of excuses.

Findings in Fact

13. The Applicant and the Respondent agreed by way of Clause 7 of a Private Residential Tenancy Agreement commencing 8 February 2019 in relation to the Property that the Respondents would pay the Applicant a monthly rent for the Property of £710. The current rent is £725 per month.
14. The Respondents has fallen into arrears of rent. The arrears were £5895 on 27 January 2022 when the Notice to Leave was served and £10 970 on 19 August 2022. Arrears have now increased to £13 870 and are continuing to increase.
15. The Applicant's agent sent letters and emails to the Respondents from 27 January- 4 May 2022 regarding the arrears and suggesting that the Respondents propose a repayment plan. The Respondent did not do so.
16. On 27 January 2022, the Applicant's solicitor sent a copy of the Notice to Leave to the Respondents by Recorded Delivery post. The said Notice requested that they remove from the Property by 31 July 2022. The Respondents received and signed for the Notice on 28 January 2022.
17. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. At the time of serving the Notice to Leave the Respondents had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy.
18. There are no outstanding benefits issues that will have any impact on the arrears. Both Respondents work. Mrs Matthew has recently applied for Universal Credit.
19. The Respondents are separated. Mr Matthews no longer resides in the Property. Mrs Matthews continues to reside in the Property with their 6 year old daughter and 16 year old son. She is seeking assistance from the Citizens Advice Bureau.
20. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Highland Council on 24 August 2022.

Reasons for Decision

21. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
- Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
 - Coronavirus (Scotland) Act 2020
22. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 of Schedule 3, namely rent arrears. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
23. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
24. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 was previously 6 months in terms of the Coronavirus (Scotland) Act 2020.
25. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Respondents are in arrears at Part 2 of the Notice in terms of Ground 12 of schedule 3. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 31 July 2022
26. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondents on 27 January 2022 by Recorded Delivery post. The Respondents received the Notice on 28 January 2022 having signed for it.
27. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 31 July 2022. In the circumstances the Tribunal is satisfied the Respondents have been given sufficient notice of 6 months in terms of the

2016 Act as amended by the Coronavirus (Scotland) Act 2020. Accordingly, the Notice to Leave complies with Section 62.

28. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on an eviction ground stated in the Notice to Leave, namely Ground 12 of Schedule 3.
29. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Johnston and Mr and Mrs Matthews. The Tribunal considered neither Respondent had disputed the basis for the application, namely that they were in substantial arrears. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by all parties and in particular the Respondents, who were both frank and honest about their financial and personal circumstances, that the factual basis of the application had been established. The Tribunal was satisfied the Respondents were in considerable rent arrears and unfortunately did not appear to be in any position to repay these, although there was clearly a desire to do so. A case under Ground 12 of Schedule 3 was accordingly met.
30. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Mr Johnston that the Respondents had not entered into a repayment plan despite saying they would consider doing so. The Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondents found themselves in a desperate position. The Tribunal empathised with them. Both were in work and were open by stating they could not see how they could repay the arrears. Despite the Respondents having a young child, the Tribunal was mindful that Mrs Matthews was sensibly seeking help from the CAB about her situation and would in the fullness of time be assessed by the Homeless Team at Highland Council. It was positive she was engaging. However, the arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order
31. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

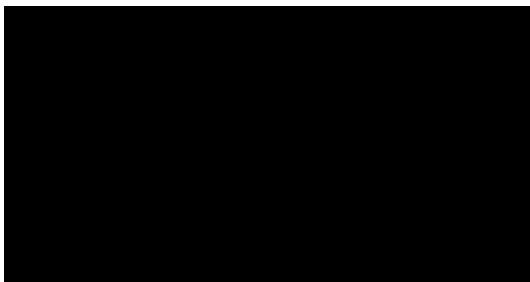
32. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Chair

12 December 2022

Date