



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/22/3956

Re: Property at 5 Borestone Avenue, Kilbirnie, KA25 6EG (“the Property”)

Parties:

Mr Bryan Lynn, 295 Townhill Road, Rashakin, Ballymena, Co Antrim, BT44 8RW (“the Applicant”)

Ms Amanda Mitchell, Dawn Thomson, 5 Borestone Avenue, Kilbirnie, KA25 6EG (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. By application, received by the Tribunal on 28 October 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 1 and 12 of Schedule 3 to the 2016 Act, namely that the Applicant intends to sell the Property and that Respondents were in arrears of rent over three consecutive months.
2. The application was accompanied by a copy of a Notice to Leave, dated 19 July 2022, advising the Respondent that the Applicant was seeking an Eviction Order under Grounds 1 and 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 14 October 2022, together with a Rent Statement showing arrears as at 14 July 2022 of

£1,637. The Applicant stated that he had instructed Allen & Harris, estate agents, in the sale of the Property.

3. On 9 December 2022, the Applicant sought leave to amend the application to include Ground 12a of Schedule 3 to the 2016 Act as an additional Ground for seeking an Eviction Order, the arrears at that date being £2,613.76. He stated that the Respondent had stopped making any payments and that the only sums being received were a small amount of Universal Credit, so the arrears were accumulating. On 16 January 2023, however, he advised the Tribunal that the Grounds for the application were "as per the notice issued to the tenant and these are the correct grounds. The tenant has been in arrears since October 2020 and I am selling the property." He confirmed that the arrears stood at £3,055.75 at 12 January 2023. Accordingly, the Tribunal did not consider at that stage the application under Ground 12a of Schedule 3 to the 2016 Act.
4. On 9 March 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 30 March 2023. The Respondents did not make any written representations to the Tribunal.

First Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 17 April 2023. The Applicant Mr Lynn was present. The First-named Respondent was not present or represented. The Second-named Respondent Ms Thomson was present. The Applicant told the Tribunal that the arrears are now £3,701.28.
6. Ms Thomson told the Tribunal that neither she nor her co-tenant had received the Notice to Leave and that they had known nothing about the case until the case papers were sent to them in early March. She denied that the signature on two recorded delivery slips provided by the Applicant were hers. It appeared, however, that these related to correspondence which post-dated the Notice to Leave, and Mr Lynn said that he had used solicitors to send the Notice to Leave. The papers submitted by him included an email of 19 July 2022 from Mair Matheson, solicitors, to the Respondents, stating that they were attaching the Notice to Leave and that the principal paperwork was being sent to them by recorded delivery. The Respondent Ms Thomson denied having received the email and pointed out that the address to which it was sent does not appear within it. The Applicant pointed out that it seemed too much of a coincidence that the Respondents stopped paying any rent shortly after the Notice to Leave was sent. Ms Thomson said that the Applicant was aware that she was not paying her rent because the Applicant had not carried out repairs to the Property.
7. Mr Lynn told the Tribunal that he had instructed Allen & Harris, estate agents, in connection with the imminent sale of other properties. He was selling up his properties in Scotland due to a family bereavement. The Respondent Ms Thomson said that she completely understood his reason for selling. She also

advised the Tribunal that a 10-month-old baby had been living with the Respondents for the last few days and that it was possible that this arrangement would become permanent. She confirmed that she had taken advice on the application from Shelter Scotland and AIMS Advocacy.

8. It was clear to the Tribunal that before it could consider the merits of the application, it would have to be satisfied that the Notice to Leave had been validly served on the Respondents. Accordingly, it would be necessary to obtain from the Applicant details from his solicitors of the email address(es) to which their email of 19 July had been sent, and evidence of delivery of the principal documents sent by recorded delivery. The Tribunal would also require to see a copy of the Tenancy Agreement, partly to determine whether the Parties had agreed in it that communication could be by email. The Tribunal also wished to give the Respondents the opportunity to provide any evidence, such as screenshots of text messages or copies of emails in which they advised the Applicant of the need for repairs and that they were withholding rent until repairs were carried out. These would assist the Tribunal to decide whether it would be reasonable to issue an Eviction Order.
9. Consideration of the application was continued to a further Case Management Discussion. The Tribunal issued Directions to the Parties.
10. The Applicant was required to provide:
 1. A copy of the tenancy agreement between the Parties.
 2. Copies of emails sent by his solicitors to the Respondents on 19 July 2022 and of the documents attached to them, including a Notice to Leave.
 3. Evidence from his solicitors of recorded delivery of the Notice to Leave to the Respondents.
 4. Any evidence which he would wish the Tribunal to consider in support of his stated intention to sell the Property.
 5. Any further evidence which he would wish the Tribunal to consider in determining whether it would be reasonable to issue an Eviction Order,
11. The Respondents were required to provide:
 1. Any evidence, such as copies of emails or screenshots of text messages, on which they intend to rely in relation to their request that the Applicant carry out repairs to the Property and that they intended to withhold rent if these repairs were not carried out.
 2. Any further evidence which they wish the Tribunal to consider in determining whether it would be reasonable to issue an Eviction Order against them.
12. On 29 April 2023, the Applicant provided further documentation to the Tribunal. It included a copy of the Private Residential Tenancy Agreement commencing on 12 April 2028 at a rent of £95 per week. By Clause 4, the Respondents agreed that all communications including notices to be served by one party or the other would be in writing using hard copy by personal delivery or recorded delivery or the email address set out in a previous Clause. The email address was that of the Second Respondent. The

Applicant also provided copies of an email of 19 July 2022, sent to that email address, by his solicitors, to which was attached the Notice to Leave and a letter from them of the same date, again enclosing the Notice to Leave, with proof of posting on 19 July 2022. In addition, the Applicant provided copies of a letter from his solicitors, dated 19 July 2022, in which they confirmed his instructions to them to complete the conveyancing for the sale of the Property upon receipt of an acceptable offer, and an email from Allen & Harris, estate agents of 15 July 2022 confirming his instructions to sell, enclosing comparable market figures and suggesting a date on which they might visit the Property. Further documents provided included screenshots of text/WhatsApp messages between the Parties regarding difficulties that tradesmen were having in contacting the Respondents to arrange access to carry out work and gas safety inspections.

13. The Respondents did not provide any response or documentation following the Tribunal's Direction.

Second Case Management Discussion

14. A second Case Management Discussion took place by means of a telephone conference call on the morning of 7 June 2023. The Applicant was present. The Respondents were not present or represented. The Applicant advised the Tribunal that he understood the Respondents are still living in the Property and that they may have taken in a baby. He stated that the small payments of Universal Credit that he had been receiving had stopped, so nothing was being paid, and that the arrears now stand at £4,160.45, with the next rent due on 9 June.
15. The Applicant also told the Tribunal that he still wished the application to proceed under Grounds 1, 12 and 12A of Schedule 3 to the 2016 Act. His email of 16 January 2023 to the Tribunal had stated that the grounds for the application were as per the Notice to Leave, but he had not intended that this should mean that he was not now proceeding under Ground 12A as well. He had no previous experience of the Tribunal and the eviction process and had indicated in an email to the Tribunal of 9 December 2022 that he wished to add Ground 12A.

Reasons for Decision

16. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 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.
17. As a preliminary matter, the Tribunal determined that the Notice to Leave had been validly served on the Respondents. The Tenancy Agreement provided for it to be sent by email to a specified email address and the Applicant's solicitors had done this on 19 July 2022. There was also evidence by Proof of

Posting that, on the same day, the solicitors had sent the Notice to Leave to the Respondents. The Tribunal did not, therefore, accept the suggestion made by the Second-named Respondent at the first Case Management Discussion that they had never received the Notice to Leave.

18. The Tribunal also considered the Applicant's representations regarding his request that Ground 12A of Schedule 3 to the 2016 Act should be included in the application. He had specifically made this request in an email to the Tribunal of 9 December 2023. The view of the Tribunal was that it had misdirected itself at the first Case Management Discussion as to the meaning of the Applicant's further email of 16 January 2023 and that it had not been the intention of the Applicant to withdraw his request to add Ground 12A. His intention had been to confirm that he was applying under the Grounds set out in the Notice to Leave and it was due to his lack of familiarity with the eviction process that he was unaware that he should have indicated that he intended also to proceed under Ground 12A. The Tribunal accepted that it would have seemed illogical for him to withdraw the application under Ground 12A when the arrears position was worsening and that he did not intend to do so in his email. Accordingly, the Tribunal agreed that the application should be considered under Grounds 1, 12 and 12A of Schedule 3 to the 2016 Act.
19. 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.
20. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.
21. The Tribunal was satisfied from the documents provided by the Applicant following its Direction that he had instructed both estate agents and solicitors in relation to the proposed sale and that he intended to sell the Property as soon as he could obtain vacant possession. The Applicant had indicated to the Tribunal at the first Case Management Discussion his reasons for wishing to sell the Property. The Respondents had not complied with the Tribunal's Direction to provide any further evidence which they wished the Tribunal to consider in determining whether it would be reasonable to issue an Eviction Order against them and had not taken the opportunity to be present or represented at the second Case Management Discussion and make orally any representations they wished the Tribunal to take into account. Having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 1.

22. 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 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.
23. The Tribunal was satisfied that the Respondents have been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondents' being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.
24. The Tribunal noted that, at the first Case Management Discussion, the Respondents had not challenged the rent arrears figures, but had stated that the Applicant was aware that they were not paying the rent because the Applicant had not carried out repairs to the Property. The Applicant contested this suggestion and the Tribunal had directed the Respondents to provide evidence, such as copies of emails or screenshots of text messages, on which they intended to rely in relation to their request that the Applicant carry out repairs to the Property and that they intended to withhold rent if these repairs were not carried out. The Respondents did not provide any such evidence, but the Applicant provided copies of text/WhatsApp messages demonstrating difficulties that tradesmen had experienced in obtaining access to the Property to carry out repairs and safety checks. In the absence of any evidence to support their claim, the Tribunal did not accept the argument of the Respondents that they were withholding rent due to the Applicant not having carried out repairs. Accordingly, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12 of Schedule 3 to the Act.
25. Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when Notice to Leave is given to the tenant on this ground in accordance with section 52(3) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding 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 or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

26. In an email of 9 December 2022, the Applicant had sought permission to amend his application to include Ground 12A and this request was included in the case paperwork served on the Respondents. The Notice to Leave was served prior to the coming into force of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and the Tribunal was content to consent to the amendment and allow an eviction ground to be included in the application, even though not stated in the Notice to Leave under Section 52(5)(b) of the 2016 Act.
27. The Tribunal was satisfied that, at the date of the application to amend to include Ground 12A, the rent arrears exceeded the equivalent of 6 months' rent and that no evidence had been produced to indicate that the Respondents' being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Applicant had stated that the arrears now stand at £4,160.45 and that no rent is currently being paid either directly by the Respondents or by the vehicle of Universal Credit. Having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12A of Schedule 3 to the 2016 Act.

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

Date 7 June 2023