



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act)

Chamber Ref: FTS/HPC/EV/20/0160

Re: Property at 19 Seafield Road, Arbroath, Angus, DD11 5HH (“the Property”)

Parties:

Ms Catherine Henderson, 3 Rankine Court, Wormit, Newport on Tay, Fife, DD6 8TA (“the Applicant”)

Miss Tamara Matthewson, Mr Ronnie Laugharne, 19 Seafield Road, Arbroath, Angus, DD11 5HH; 19 Seafield Road, Arbroath, Angus, DD11 5HH (“the Respondents”)

Tribunal Members:

**Yvonne McKenna (Legal Member)
Helen Barclay (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order in respect of the Property should be granted against the Respondents.

Background

This is an application for recovery of possession and eviction under section 51(1) of the 2016 Act and Rule 109 of the Tribunal Procedure Rules (“the Rules”). The Applicant asserts that possession should be recovered under Ground 12 of Schedule 3 to the 2016 Act.

The Tribunal had regard to the following documents: -

1. Application dated 14th January 2020.
2. Section 11 Notice.
3. Private Residential Tenancy Agreement (PRTA) commencing 4th October 2019 in the name of both Respondents.
4. PRTA commencing 4th April 2018 in the name of the First Respondent only.

5. Schedules of rent arrears dated 14/01/20 and 4/10/2019.
6. Notice to Leave dated 11th December 2019.
7. Confirmation of Notice to Leave being sent by e-mail to each Respondent dated 11th December 2019.
8. Recorded Delivery of Tribunal CMD Notification letter sent and received by each Respondent dated 17th June 2020 for the first CMD held on 22nd July 2020.
9. Copy Title Deed for the Property.
10. Further representations by the Applicant dated 22nd July 2020 (17 pages) being copy ledgers for the Property and accompanying notes from the Applicant's Representatives computer system detailing their interactions with the Respondents regarding rent payments over the period.
11. Copy letters sent to the Applicant's Representative and the Respondents dated 6th August 2020 intimating the date of the CMD on 2nd September 10am (by recorded delivery) both of which were delivered and signed for.
12. Reminder e-mails sent to the Applicant/Respondents by the tribunal on 1st September re the CMD on 2nd September.
13. Updated ledger from the Applicant's Representative for the Property dated 31st August 2020.
14. Updated ledger from the Applicant's Representative for the Property dated 4th February 2021 together with accompanying notes detailing contact with the Respondents regarding rent payments for the intervening period from 3rd September 2020 to 1st February 2021.

Summary of Discussion at the Case Management Discussion (CMD) on 2nd September 2020

The CMD took place by teleconference call in view of the restrictions imposed by the COVID-19 pandemic.

The Applicant was represented by Mr. Trevor White a Director within Rentlocally Tayside and Fife.

The Respondents did not participate and were not represented.

This was the second CMD. A CMD had taken place on 22nd July 2020. The Minutes of the CMD of 22nd July 2020 were sent out recorded delivery to the Respondents on 24th July 2020. Only Miss Matthewson had signed for the same.

The Legal Member asked Mr. White what his position was on that date. He said that the arrears of rent had been an ongoing issue since April 2018 when Miss Matthews on moved into the Property and that since the joint PRTA was entered into the account had been in continuous arrears.

Ordinarily he would be inviting the Tribunal to grant an eviction order at that time. He referred to the up to date ledger of rent for the Property and said that the current arrears amount to £1218.85. The rent is £495 per calendar month payable in advance. It is evident that there have been arrears of rent over the last 3-month period and considerably longer. Mr. White confirmed that the rent was now paid directly by the benefits agency via the local council.

Since the last CMD he had had little interaction with the Respondent. He said that at the last CMD in July that Miss. Matthewson stated that Mr. Laugharne left the Property in October or November last year. That, he said, did not accord with his records. He said that a telephone call had been made to the Respondents by his organisation on 29th January 2020. This was to establish Mr. Laugharne's date of birth in relation to a joint Universal Credit claim. Miss Matthewson had provided that on the 29th January and on the 31st January Universal Credit was confirmed for both tenants. To state that Mr. Laugharne had moved out last year he suggested did not "stack up".

On 1st September 2020, his financial team had chased Miss Matthewson by telephone regarding the rent arrears after an e-mail had been sent to her. She had told the finance team that her internet "was down" and that she had not received this e-mail. She was asked if she could pay anything in the future moving forwards regarding the arrears.

Mr. White described the case as, "a difficult one". Ordinarily he would be looking for an order from the tribunal for eviction on that date. However, on this occasion he wanted to give the Respondents a period of approximately 4 -6 weeks to ascertain if they could resolve matters. He said that Miss Matthewson is a single parent and that on the face of it Mr. Laugharne is no longer around. He intended to have a staff member call at the Property and inspect the same over the continued period to establish if Miss Matthewson is now the sole tenant residing there and , if so, whether they can resolve matters between them without an order being sought.

Accordingly, at the date of the CMD the Applicant did not seek eviction.

The Legal Member explained that the Tribunal require to look at the reasonableness of granting an eviction order and in that regard require to consider whether arrears of rent are wholly or partly a consequence of delay or a failure in the payment of a relevant benefit . Miss Matthewson had said at the last CMD that this was at least partially the reason for the arrears. No verification of this or further representations from the Respondent had been received, however. The Legal Member said at the CMD in July 2020 that the Respondent should be able to produce verification to the Tribunal that this was the case. This could take the form of information when her claims for benefits were made and communications from the benefits agency together with bank statements to substantiate any such delay in payment.

In the circumstances the best way forward was to continue the case to a full Hearing of the Tribunal. If an agreement was reached between parties then they could advise the Tribunal in due course and the Hearing would not require to take place.

If no agreement was reached then the parties could lead their evidence to the Tribunal to persuade the Tribunal that the order was / or was not reasonable, taking the whole circumstances into account.

It did not appear to be the case -certainly from the last CMD that the background was disputed regarding the terms of the lease and the rent arrears that had accrued. The Tribunal require to consider whether the Respondent 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 and therefore whether it is reasonable to grant an order or not.

In the circumstances the CMD was continued to a full Hearing on 23rd October 2020 at 10am.

Directions were issued to the parties on the 2nd September in the following terms: -

- The Applicant is required to lodge at least 14 days in advance of the Hearing
 - (i) an updated rent ledger showing the rent arrears from the date the application was lodged to that date.
 - (ii) a list of any witnesses to be called to support the application by oral evidence
 - (iii) any further or additional productions/ documents to be relied on in evidence

- The Respondents are required to lodge at least 14 days in advance of the Hearing
 - (i) all/any proof/ productions /representations or documents demonstrating that the arrears of rent have accrued because of a delay/ failure in benefit payments having been received.
 - (ii) A list of any witnesses to be called to support the Respondent's position.

Neither party complied with these directions

The Hearing 23rd October 2020

The Hearing took place by teleconference on 23rd October 2020 at 10am due to the disruption caused by the COVID-19 pandemic.

Neither party attended at this time. The Tribunal afforded parties until 10.15 before the Tribunal proceeded to allow any issues with difficulties dialling in/ lateness etc to be resolved. No parties had attended the teleconference call by 10.15.

The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that all parties had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. Letters had been sent to all parties by the Tribunal on 23rd September 2020. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of parties and the material before the Tribunal. and in the circumstances the Tribunal considered the application in their absence.

Since the Application was not moved for at the date of the Hearing and there was no attendance by either the Applicant or the Respondent the Tribunal refused the application due to a lack of want of insistence.

The Applicant had not asked for the Order for eviction to be granted either at the last CMD or on the date of the Hearing.

Neither party had engaged with the tribunal process and procedures since the last CMD.

Request for Recall dated 28th October 2020

An application for recall was submitted by the Applicant's Representative on the basis that he had been absent from work with a virus and had left a message for a work colleague to contact the tribunal and explain but this was not acted upon.

The recall request was not opposed by the Respondent and was granted by the Tribunal and a further Hearing date set for 12th February 2021.

The Hearing 12th February 2021

The Hearing took place by teleconference on 12th February 2021 due to the continued disruption caused by the COVID-19 pandemic.

Mr Trevor White from Rentlocally Tayside and Fife attended the Hearing as the Applicant's Representative. The Respondents did not attend, and no communication had been received from them.

The Tribunal requested that the Applicant provide an updated rent statement. A short adjournment of the tribunal took place to allow this document to be produced together with rent notes from the finance department of Rentlocally setting out any communication they had with the Respondent. These were produced and considered by the Tribunal members.

Mr White was invited to detail what he was asking the Tribunal to do today. He said that since the last Hearing that the Respondents had not engaged with his finance team who were frustrated at the lack of engagement with either calls or notes left at the Property. He sought an eviction order today. He said that the arrears of rent as at today's date amounted to £1013.23. He said that currently the Applicant is unsure whether both Respondents are living at the Property or whether it is only the First Respondent.

He also agreed that the whole monthly rent of £495 has been paid direct from the local authority since early 2020. This is since the Applicant applied to have the rent paid by the local authority directly from the Respondent's due benefits as opposed to them being paid to the Respondents in the first instance. Additional payments have been made by the local authority towards the arrears of rent since February 2020. Since June 2020 additional payments have been made at the rate of £34.27 per month.

Mr White was asked about the opening balance on the rent account for this PRTA. The First Respondent had been a tenant under a separate and previous Private Residential Tenancy dated 4th April 2018. When the new tenancy agreement was signed the Applicant had transferred the sums due under the previous tenancy agreement and these had been allocated to the new PRTA in the name of both Respondents. He said that this was common practice. There was no suggestion that the Respondents had agreed to this course of action or that a separate agreement had been entered into agreeing that these arrears would be allocated to the rent due under the new PRTA.

Findings in Fact

1. The Applicant is the landlord, and the Respondents are the tenants in respect of a PRTA relating to the Property dated 4th October 2019.
2. Rent was payable under the agreement at the rate of £495 per month.
3. The First Respondent was the tenant of the Property under a previous PRTA dated 4th April 2018 which ended when the PRTA was signed by the Respondents.
4. The tenancy is ongoing.
5. As at the date of commencement of the new PRTA the Applicant transferred the outstanding balance due under the first PRTA to the rent account for the Property namely £688.
6. On 11th December 2019, the Applicant served a Notice to Leave based on Ground 12 of Schedule 3 of the 2016 Act on the Respondent by e-mail as provided for in the PRTA.
7. The Notice to Leave states as the date when proceedings can be raised the date of 10th January 2020 and gives information about arrears accrued and states that the Respondents were in rent arrears over 3 consecutive months.
8. The rent account as at today's date shows a balance due of £1013.23. This includes the arrears under the first PRTA of £688.
9. The arrears of rent due under the current PRTA as at the date of the Hearing is £325.23.
10. The arrears of rent due under the PRTA when the Tribunal first considered matters at the date of the first CMD on 22nd July 2020 was £530.85
11. The Respondents have been in arrears of rent for more than three consecutive months since at least January 2020.
12. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
13. The Notice required under section 56 of the 2016 Act was issued to the local authority on 14th January 2020.

Reasons for the Decision

Relevant Legislation

The 2016 Act

Section 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. Rent arrears

Grounds under Schedule 3 of the 2016 Act

Rent arrears

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

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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

(ii) 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, and

(b) 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.

(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 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.

(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

The Respondents have not made any representations and did not attend the Hearing. There was nothing before the Tribunal to indicate that the arrears were due to a failure of benefits. The Respondents have not engaged with the Tribunal in that respect.

The rent arrears due under the first PRTA which were added to the rent account in the name of the joint Respondents were £688. This sum was due under the previous PRTA and is not arrears of rent due under the existing tenancy agreement. If this amount is deducted from the sums due at today's date this brings the arrears of rent down to £325 which is an amount less than one month's rent due under the PRTA.

However, the Tribunal requires under section 12 (2)(a) of the Act to look at matters on the date that the application was first considered by the Tribunal which was the first CMD on 22nd July 2020. On that date the sums outstanding on the rental account were £1218.85 but this wrongly included the arrears due under the prior PRTA of £688. If the sum of £688 is deducted at that date from the sum of £1218.85 then the amount of arrears of rent due under the PRTA with the Respondents on the date that the Tribunal first considered the application is £530.85. This is an amount over and above one month's rental. In addition, on that date there was arrears of rent for a continuous period of three months.

The Tribunal when they verbally gave their decision considered the position as at today's date. That position is incorrect and following further deliberations the Tribunal reviewed the position and are agreed that there was at least one month's rent due at the date of the first CMD, and that there were arrears over the three months prior to the first CMD. Therefore, the ground is a mandatory ground if there is no suggestion that the sums are not due wholly or partially a consequence of a delay or failure in the payment of a relevant benefit.

In the circumstances the decision of the Tribunal today is to grant the order for eviction. Rent was outstanding at the date of the first CMD in an amount more than one month's rental. Rent on that date had been outstanding for at least three consecutive months. There is no evidence before the Tribunal that delays in receiving benefits are a factor.

The Tribunal found that Ground 12(2) of Schedule 3 of the 2016 Act does apply in this case.

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.

Yvonne McKenna

12th February 2021

Legal Member/Chair

Date