



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/22/1740

Re: Property at 153 Forth Crescent, Dundee, DD2 4JA (“the Property”)

Parties:

Complementary Properties Ltd, 14 Esk Point, Dalkeith, EH22 1HW (“the Applicant”)

Clara Turner, 153 Forth Crescent, Dundee, DD2 4JA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 5 May 2021.
2. The application was dated 7 July 2022 and lodged with the Tribunal on or around that date. (An application in identical terms was originally lodged on 8 June 2022 but as this was too early under the Notice to Leave referred to below, it was relodged on 7 July 2022.)
3. The application relied upon a Notice to Leave dated 6 December 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email on the same date to the email address provided by the Respondent in the PRT Agreement in accordance with the provisions of

the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £2,300 at that time, provided details of the months missed (September to December 2021) and referred to a “rent ledger” which was said to show this amount. A copy of the December 2021 rent ledger which was not provided to us but a more up-to-date rent ledger to 8 June 2022 was lodged with the application showing arrears as of that date of £4,029.12, being made up of the net arrears outstanding from rent due from 1 September 2021 to 1 June 2022 (10 months) and payments of irregular amounts on: 20 December 2021, 14 January 2022 (two payments), 18 February 2022, 17 March 2022, and 17 May 2022 (two payments). The rent due under the PRT is £575 per month due in advance on the first day of each. The Notice intimated that an application to the Tribunal would not be made before 9 June 2022.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council on 7 July 2022 was provided with the application. Evidence of the Applicant’s letting agent providing pre-action protocol information to the Respondent by email on 5 July 2022 was further provided in the application papers.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 24 October 2022 at 14:00. We were addressed by Caitlin McKendrick, Accounts Supervisor of the Applicant’s letting agent, Tay Letting. There was no appearance from the Respondent.
6. We were informed by the Clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant’s agent said the last material contact on arrears was by telephone in June 2022 at which a payment proposal was made but not fulfilled. Subsequent contact had been made by the Applicant’s letting agent in regard to maintenance and inspections but the Respondent had not cooperated. We considered that the Respondent had received clear intimation of the CMD and, having not commenced the CMD until around 14:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
7. At the CMD, the Applicant confirmed that the application for eviction was still insisted upon and referred to a further updated rent ledger to 17 October 2022, showing a further payment (of £500) on 17 June 2022 but no payments since. Arrears were now £5,829.12.
8. Of the sporadic payments, the Applicant’s agent was aware that some earlier payments had come from Universal Credit, but when the Respondent was in contact with them in around February and March 2022 she said that she was not on benefits. The Applicant was thus unaware of any application by the Respondent for benefits other than accepting that previously some payments

had apparently come from UC (though the last appeared to be the two on 17 May 2022 of £240.51 and £82.44).

9. The Applicant believed the Respondent and daughter remained in occupation of the Property but was not aware of the daughter's age. In discussions by email of early June 2022, the Respondent had offered to pay £700 per month, but then failed to make such a payment (paying only £500 once on 17 June 2022). In subsequent telephone discussions of June 2022, being the last round of contact Ms McKendrick had with the Respondent, the Respondent first asked for an extra week to move out but then did not move out; and thereafter the Respondent agreed to take up the Applicant's offer to consider a payment plan proposal but then made no proposal. The Respondent had made no contact on arrears thereafter. In discussions with Ms McKendrick, the Respondent had most recently said she was unemployed, but in discussions since June 2022 with Ms McKendrick's colleagues who dealt with maintenance issues the Respondent had at times claimed to be unavailable for inspections and maintenance visits due to being out at work (as well as, at various times, being unable to afford access due to her ill-health or that of her daughter).
10. No motion was made for expenses.

Findings in Fact

11. On 30 April and 4 May 2021, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 5 May 2021 ("the Tenancy").
12. In terms of clause 4 of the Tenancy Agreement, the parties agreed that email to the email address provided by the Respondent could be used for communication of notices in terms of the Tenancy.
13. On 6 December 2021, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondents with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £2,300.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 9 June 2022.
15. The Applicant's agent served a copy of the Notice to Leave on the Respondent by email to the agreed email address for the Respondent on 6 December 2021.
16. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council on the Applicant's behalf.

18. The Applicant's agent provided the Respondent with suitable pre-action protocol information by email on 5 July 2022.
19. As of 24 October 2022, the Respondent remained in arrears of rent in the amount of £5,829.12 which is the equivalent of over 10 months of rent.
20. The Respondent does not claim to have paid any amount of the arrears of £5,829.12 remaining as at 24 October 2022.
21. The sum of arrears remaining as of 24 October 2022 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
22. On 30 September 2022, the Tribunal intimated during a CMD to the Respondent the date and time of the CMD of 24 October 2022.

Reasons for Decision

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
24. Ground 12 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
 - (1) *...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 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.*
25. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. We considered whether the Respondent's apparent previous receipt of Universal Credit was relevant to our consideration but, further to the Applicant's submissions – uncontradicted by any submissions from the Respondent, we were not of the view that the arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

26. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the increased amount and duration of the arrears. Though the Respondent appeared at one point ready to engage and make proposals, she failed to carry them through and was now not engaging. She was said to be providing inconsistent information as to her employment position. Though we appreciated that it was a family home, we cannot assume information not provided to us about the Respondent's needs. We were presented with a tenant who has not paid regularly since 1 September 2021 has no proposal to make ongoing payments, has no proposal to pay arrears, and has ceased to communicate with the Applicant, and has never communicated with the Tribunal.
27. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicant and reasonable to grant. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to grant an order for eviction at this time.

Decision

28. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that 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.

J. Conn

24 October 2022

Legal Member/Chair

Date