



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/2629

Re: 97 Glen Avenue, Larkhall, ML9 1JN ("the Property")

Parties:

Gareth Munro, 7 Earls Hill, Cumbernauld, G68 9ET ("the Applicant")

Barry Munro, GBS Lets, 82 Union Street, Larkhall, ML9 1DR (The Applicant's Representative')

Erryn Delaney residing at 97 Glen Avenue, Larkhall, ML9 1JN ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member) and Elizabeth Dickson (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 29th July 2022. The application stated that the ground for eviction was as follows:

'The landlord is making an application for eviction due to the fact that the tenant is more than three consecutive months of rent arrears. At the time of the application the tenant is £2775.00 in arrears.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 16th December 2019. The commencement date of the tenancy was 12th December 2019.

- A rent statement for the period 12th August 2021 to 25th March 2022.
- Notice to Leave dated 12th May 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 12th June 2022.
- Email from the Applicant's representative to the Respondent dated 12th May 2022 sending her the Notice to Leave.
- Section 11 Notice addressed to South Lanarkshire.
- Copies of Pre action letters sent to the Respondent dated 21st June 2022, 27th June 2022 and 30th June 2022.

2. Written Representations

The Respondent did not provide any written representations.

3. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 12th January 2023.

Barry Munro, the Applicant's Representative, and the Respondent attended the CMD.

4. The Tribunal identified with the Applicant and the Respondent's representative the following agreed facts, which were accepted by the Tribunal:

4.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy detailed in the lease was 12th December 2019.

4.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.3. The Applicant, Gareth Munro, is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate LAN132063. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 9th November 2007.

4.4 The rent detailed in the tenancy agreement was £500.00 per calendar month, payable in advance.

4.5 The Notice to Leave was dated 12th May 2022 and it was emailed to the Respondent on 12th May 2022.

4.6 Clause 4 of the lease states that the Landlord and the Tenant agree that all communications under the act, including Notices, will be made in writing using the email address set out in the lease.

4.6 The Notice to Leave stated that the Respondent was in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

4.7 The rent arrears were more than £1500 since May 2022.

5. Oral Evidence

5.1 Mr Munro advised that the rent arrears amounted to £1750 in March 2022 and the rent statement has been produced to the Tribunal. No rent payments were made in March, April and May. From June 2022 they received rent payments direct from Universal Credit and the monthly shortfall from June 2022 amounted to £25. The current arrears amounted to £3450. He considers it reasonable to for the eviction to proceed due to the level of the arrears and the fact that the Landlord has mortgage payments to pay.

5.2 Miss Delaney was not sure if she agreed with the rent arrears figure but she did accept that the arrears had been more than £1500 since March 2022. She advised that there are issues with the Property. However, she advised that she has not lodged a counter claim or repairing standard application with the Tribunal. She will be pleased to move out. She also confirmed that the rent arrears are not due to a delay in her receipt of benefits. She explained that she resides in the Property with her ten year old daughter.

6. Decision

6.1 The Tribunal acknowledged that the Respondent was due to pay the Applicant rent at the rate of £500 per month. The rent payments were due in advance. At (i) the date of the Notice to Leave 12th May 2022 (ii) the date of the Application 29th July 2022 and (iii) today's date the rent arrears exceeded £1500, being the amount of three months rent.

6.2 The Tribunal determined that at the date of the Notice to Leave, the date of the application and at the present date the Respondent has rent arrears of three or more consecutive months.

6.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

6.4 The Tribunal found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing, the fact that the Applicant has mortgage payments to make, the fact that the Applicant had issued three preaction letters to the Respondent, which had been produced to the Tribunal, and the Respondent does not oppose the application.

6.5 Accordingly, the Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

6.6 The Tribunal granted the eviction.

6.7 The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as the Notice to Leave was served on the Respondent before 6th September 2022 and the application was received by the Tribunal before 28th October 2022.

7. 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.

Legal Member

12th January 2023