

Dicing with Discretion

With Holyrood MSPs currently considering new legislation to make all evictions discretionary on a permanent basis (see page 10), SAL policy manager **Caroline Elgar** explores eviction cases where the tribunal has refused to grant an eviction order on the grounds of reasonableness

PRIOR to the Covid-19 pandemic, grounds for eviction fell into two categories – mandatory or discretionary. If a landlord served notice on a mandatory ground, the tribunal was required to grant an eviction order if all the correct procedures had been followed by the landlord. However, if a landlord served notice on a discretionary ground, the tribunal had to exercise a reasonableness test in deciding whether to evict the tenant or not. In simple terms, this means that the tribunal will decide based on the circumstances of the case whether the tenant’s need/right to occupy the property is outweighed by the

landlord’s need/right to repossess the property.

As a result of legislation introduced in Scotland at the start of the Covid-19 pandemic in April 2020, all evictions are currently discretionary. Despite this, analysis of tribunal cases conducted by SAL shows that in 2021, only 1.2 per cent of competent eviction applications were refused on the grounds of reasonableness. During 2021 there were 423 competent cases (cases where the landlord has followed the correct procedures meaning that an eviction order could be granted). Of these, 418 were granted and five were refused on reasonableness grounds. A further 127 cases were rejected because the landlord had failed to follow the correct eviction procedures, the eviction grounds cited didn’t apply, the landlord didn’t attend the tribunal meeting or the tenant had already vacated the property.

Written decisions for all eviction cases heard by the tribunal are available

to the public on the tribunal’s website at bit.ly/FTTDecisions

Details of the five cases where an eviction order was refused on the grounds of reasonableness are as follows:

Ford v Anunobi

The tenants were on a PRT and the landlords served notice on the grounds that they intended to refurbish the property, specifically renovating the bathroom. The tribunal refused to grant an eviction order, firstly because they were not satisfied that the ground applied; they didn’t believe that the landlord had a firm intention to refurbish the property when the Notice to Leave was issued and they were also not satisfied that it was impracticable for the tenant to continue occupying the property while the work was carried out. The tenants’ neighbours had offered for them to use their facilities next door while the most disruptive work was taking place. The tribunal was also not satisfied it would be reasonable to grant the eviction order having weighed up the position of both the landlords and the tenants. One of the tenants was disabled and they had a daughter at the local school which had made it difficult and stressful for them to source suitable alternative accommodation. See details via bit.ly/FordVANunobi

Stewart v Jenkins

The tenant was on a PRT living in the property with her partner. The landlord served Notice to Leave on the grounds that the tenant's partner had behaved in an anti-social manner towards a neighbour, namely blocking him from using a shared path on three occasions and behaving aggressively towards him during these incidents. The tribunal considered it was not reasonable to grant an eviction order because, at the point they heard the case, there had been no further incidents of anti-social behaviour for over 11 months. See details via bit.ly/StewartVJenkins

Adams v Cunningham

The tenant was on a PRT and the landlord served Notice to Leave on the grounds of anti-social behaviour because the tenant was failing to appropriately dispose of rubbish, causing upset to neighbours. When asked to address the issue of inappropriate disposal of waste, the tenant rectified his behaviour, but this was not sustained over the longer term. The landlord, however, failed to issue the tenant with any formal warnings about this behaviour, failed to visit the property to investigate the problem and failed to attend the tribunal hearing. The tribunal commented that the landlord "does not appear to have adequately managed

the tenancy nor reasonably addressed the issues of inappropriate disposal of waste, as a reasonable landlord should". The tribunal weighed up the apparent nuisance and annoyance caused to the neighbours by the behaviour, with the repercussions of evicting the tenant from his home and were not persuaded that eviction was either reasonable or a proportionate response. See details via bit.ly/AdamsVCunningham

Badesha Properties v McGee

The tenant was on a PRT and Notice to Leave was served for rent arrears. The tribunal considered that it was not reasonable to grant an eviction order for two reasons. Firstly, because by the time the tribunal made a decision on the case the arrears had reduced from £2057 in April 2021 to £1441 in August 2021 and the tenant was paying the monthly amounts falling due. Secondly, because the landlord had failed to comply with the pre-action requirements. See details via bit.ly/BadeshaVMcGee

Kaur v Duncan

The tenant was on a PRT and Notice to Leave was served for rent arrears, with the tenants owing £6230 (just under 16 times the monthly rent of £390) when the tribunal decided on the case. Despite this

level of arrears, the tribunal decided that it was not reasonable to grant an eviction order because the landlord had failed to provide the tenant with a written tenancy agreement, and this meant that the tenant had been unable to claim housing benefit to help with the rent payments. The landlord had also failed to comply with the pre-action requirements which were introduced in April 2020 and require landlords evicting a tenant for rent arrears to issue written guidance to the tenant on their rights and sources of financial assistance and make reasonable efforts to agree a payment plan. See details via bit.ly/KaurVDuncan

Despite these cases, landlords can be reassured that if they follow the correct procedures and manage tenancies appropriately, they stand a very high chance of being successful with an eviction if they ever need to serve notice on their tenants. Proposals to make evictions discretionary on a permanent basis will benefit a tiny minority of tenants and yet they are likely to cause harm to many more by reducing the availability and affordability of properties as landlords continue to exit a sector which is becoming increasingly unattractive as an investment choice.

SAL will continue to lobby the Scottish Government and MSPs to request that they reinstate the mandatory eviction grounds which were in place pre-pandemic. Mandatory grounds are vital to provide landlords and investors with confidence that they can regain possession of their property should they have a genuine need to do so. //

“As a result of legislation introduced in Scotland at the start of the Covid-19 pandemic in April 2020, all evictions are currently discretionary”

