



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/23/1928

Re: Property at Christchurch Hall, 60 Main Street, Bathgate, EH48 3RJ (“the Property”)

Parties:

Mrs Magdolna Dobo, 2119 Pecel, Isaszegl UT 78, Hungary (“the Applicant”)

Mr Richard Roberts, Christchurch Hall, 60 Main Street, Bathgate, EH48 3RJ (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Mary Lyden (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 for an eviction order against the Respondent, who lets the Property from the Applicant in terms of a private residential tenancy agreement. It proceeds on the basis of ground 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’) (substantial rent arrears). It called for a case management discussion (‘CMD’) at 10am on 20 November 2023, by teleconference. The Applicant was on the call in-person and was represented by Ms Wooley of Bannatyne Kirkwood France & Co., solicitors. The Respondent was not on the call and was not represented. The commencement of the CMD was delayed by 10 minutes to allow for any

technical difficulty he may have been experiencing, but there remained no contact from him.

2. The matter had previously called for a CMD on 1 September 2023, conjoined with an application for an order for payment of the rent arrears that found this application (FTS/HPC/CV/23/1929). In advance of that CMD, the Respondent's daughter had been in touch with the Tribunal indicating that she had discussed the applications with her father, that he was in hospital in England, and that he expected to be returned home in November or December, at which point he would pay the arrears. No appearance was made at the CMD on the part of the Respondent. The Tribunal made a direction requiring written submissions from the Respondent on the application; and, among other things, evidence of his being in hospital and his prognosis, and his ability to repay the arrears. The Tribunal also indicated that it considered the Respondent's daughter was acting as his representative, in order to allow her to make representations on his behalf and receive any further communication from the Tribunal or the Applicant.
3. A further email was received on 25 September 2023, from the Respondent's daughter, saying she could not access any of her father's bank information. She suggested that it would not be possible for her to get any documentation from medical professionals or others involved in her father's case in the timescale stipulated, either. She indicated it may take 4 to 6 weeks from then to get this. Nothing of the sort has yet been forwarded to the Tribunal.
4. The email went on to set out that the Respondent's other daughter had moved into the Property in his absence, to maintain it and watch over his belongings. It suggested she was intending to move out again in February 2024, so would be made homeless, with her children, should the order be granted; and that she should be treated as a tenant. It raised a question as to whether the documentation supporting the application had been properly served, it having been sent to the Respondent's email address. It appeared, however, from the narrative set out in it that the Respondent accepted that he was in arrears to the amount sought.

5. There was some further email communication from the Respondent's daughter restating some of the points already raised. On 16 October 2023, she emailed the Tribunal indicating that she was attempting to get the day off work to appear at the CMD on 20 November 2023; but that, if that were not possible, her sister would instead phone in. She indicated that evidence of her father's medical situation had been sought and would be available within 28 days.
6. On 6 November 2023, an application to amend the sum sought in the conjoined application to £14,400 was made by the Applicant. This was forwarded to the Respondent's daughter, who acknowledged receipt and stated she had forwarded it to her father, but made no objection to it being granted. No objection has been received since that time, either.
7. The Tribunal considered that the Respondent had been given ample opportunity to engage with the Tribunal in a meaningful way in regard to the application, but he had not done so. It had not been presented with any concrete evidence to support the suggestion that he was not able to do this. The Respondent's daughter's communication, while effusive regarding details of little real relevance to the case, was evasive in regard to those matters of most central importance: and in particular, the information requested in the directions in this and the conjoined case. The position being set forth was fundamentally not credible. The Tribunal was being told that the Respondent was so ill that he could not address application, or arrange to make any payment of rent (and had been for almost a year); but, also, that he was being prepared for discharge from hospital within the next month or so, when full payment would be made. Having found that explanation to be incredible, it was not fair to delay resolution of the case further, pending more meaningful engagement from the Respondent. The Tribunal therefore felt it was fair to proceed in the Respondent's absence.
8. In any event, the communication that had been received acknowledged the arrears sought originally, and had not set out any opposition to the sum

sought, as amended. The other points that had been raised might best therefore be considered as objections to the order on the grounds of reasonableness and were taken into consideration by the Tribunal as such.

- Findings in Fact

9. The Respondent lets the Property from the Applicant in terms of a private residential tenancy, with a start date of 7 November 2022.

10. In terms of that agreement, rent of £1,200 is due on the 7th day of each month.

11. The tenancy agreement also stipulates that any notices relating to the tenancy must be served by email.

12. On 11 January and 1 February 2023, the Applicant, via her agents, sent letters conforming with the pre-action requirements set out by the Scottish Ministers.

13. On 9 May 2023, the Applicant sent a notice to leave to the Respondent, indicating that she intended to rely on ground 12A of schedule 3 to the Act in any proceedings to follow.

14. On 9 May 2023, the Respondent was in arrears of rent to the sum of £8,400.

15. As at the date of the CMD, the Respondent was in arrears of rent of £14,400.

16. The Respondent has not paid any rent since the start of the tenancy.

17. The failure to pay rent is not as a result of any delay or failure in paying a relevant benefit.

18. At some point in early 2023, the Respondent's daughter moved into the Property with her family, including children of 14 and 15 years old, in order to take care of his belongings there.

- Reasons for Decision

19. The Tribunal noted that the basic requirements of the ground relied upon were not opposed, in that it was not at issue between the parties that more than 6 months' rent arrears had accrued on the date the notice to leave was served. Insofar as the question of proper service was raised as an objection to granting the order by the Respondent, the Tribunal considered that the clear terms of the tenancy agreement were that notices were to be served by email, and there was documentary evidence provided to the effect that this had taken place. Proper service had therefore been effected.

20. This left the question of whether it was reasonable to grant the order. There was significant weight to the Applicant's position that it was. The Tribunal noted that the pre-action requirements had been met by the Applicant; and that there was no question of a delay or failure in payment of a relevant benefit to explain the arrears (or part of them). The arrears are substantial and there does not seem to be any evidence to suggest that they will be paid off. The Respondent was directed to produce evidence that he had funds to do this, but did not do so. It is in any event difficult to see why, if funds were available to pay the arrears, this was not already done. The Tribunal has already set out above why it did not accept the explanation that the Respondent is in hospital as truthful (para.7). He has not engaged at any point in this process, which tends to cast doubt on any suggestion that he will do in the future.

21. It was suggested that the fact that the Respondent's daughter has been inhabiting the Property with her family since January 2023 gave her the status of tenant, as she had been paying utilities bills. There is no basis in law for this suggestion. She has been inhabiting the Property with the permission of the Respondent but has made no independent agreement with the Applicant. She has not paid any rent. Any contracts she, or the Respondent, has with utilities suppliers are quite separate from the tenancy agreement and the Applicant is not party to them.

22. The Tribunal did consider whether the impact on her and her family of being evicted was sufficient to establish that it was unreasonable to grant the order, but determined that it was not. It is not reasonable for someone to expect to live somewhere rent-free indefinitely. It had been suggested that the only reason she was there was to look after the Property and her father's possessions while he was away. To the extent that there was any basis in fact for that, it ceases to be necessary for her to do so after any eviction order is effected.

23. The Tribunal therefore concluded that it was reasonable to grant an eviction order.

- Decision

Eviction order granted.

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.

N Young

Legal Member/Chair

20 November 2023

Date