



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/23/1315

Re: Property at Pilmuir House, Pilmuir Estate, Haddington, EH41 4HS (“the Property”)

Parties:

The Trustees of Henry Wades Pilmuir Trust, C/O Athene Associates, 37a Sidegate, Haddington (“the Applicant”)

Mr Christopher Cruden, Mrs Annabel Cruden, Pilmuir House, Pilmuir Estate, Haddington, EH41 4HS; Pilmuir House, Pilmuir Estate, Haddington, EH41 4HS (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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

Background

1. An application was received by the Housing and Property Chamber dated 21st April 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) (Scotland) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 9th June 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 14th July 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 30th July 2023.

3. On 29th June 2023, Mr Mark Coull, the Respondent's representative, emailed the Housing and Property Chamber requesting that the case be postponed allowing Mr Coull to attend the CMD, to allow the Respondents to become more financially stable and due to medical reasons arising from Mr Cruden's ongoing health issues. The Tribunal agreed to the postponement. A new date was set for 14th September 2023 at 10am by teleconferencing. All parties were written to by email on 15th August 2023 informing of the new date of the CMD.
4. Both parties lodged submissions prior to the CMD.
5. The case was conjoined with case FTS/HPC/CV/23/1389

The Case Management Discussion

6. A CMD was held on 14th September 2023 at 10am. The Applicant was represented by Mr Thomas Stanley, Athene Associates Limited. The First Named Respondent was present and appeared for both Respondents. The Respondents were represented by Mr Mark Coull, Haddington Citizens Advice Bureau.
7. Mr Stanley said that he was still seeking an order for eviction. He said that there had been many offers of payment but that these were not forthcoming. He noted that he had been contacted by the First Named Respondent in January 2021, March 2021, March 2022 and January 2023 regarding payments which were not paid. He considers that this demonstrates a pattern of behaviour in terms of payment. He is not persuaded that there will be a lump sum payment that has been offered in October will be paid given the Respondents history with payments and payment offers. Mr Stanley said that the current payments for the rent are being made in two lots by Mrs Cruden. This is not meeting the full rent charge. It is approximately £75 per month short of the rent charge. The arrears currently stand at £9341.60. Mr Stanley said that the Property is a 5 bedroom property over three floors. It is only occupied by the Respondents. The Tribunal found the rent statement unclear and asked if Mr Stanley he would produce a clear rent statement with columns under the headings date, rent due, rent paid and arrears. The payments should be allotted to the period that they have been paid.
8. Mr Coull said that there were issues arising out of the case. He said that he considered that there should be a discount of 10% on the rent charge as the grass has not been cut as per the lease. The Tribunal queried if the rent had been withheld and the appropriate notices served. Mr Coull confirmed the rent had not been withheld and there has been no notices served upon the Applicant. There has not been a Repairing Standards application made but notices have been sent to the Applicant.
9. Mr Coull said that the arrears were not in dispute. Mr Coull said that the Universal Credit payments would continue. The Tribunal was not clear how long that it would continue in payment. Mr Coull said that a payment of £5400 would be made at the end of October as per his submission. This would be in addition

to the payment made by Universal Credit. The Tribunal needs this exact position of benefit entitlement clarified in terms of ongoing entitlement. The DHP has been extended until 31st October 2023.

10. It was raised by Mr Coull that he was not satisfied that the Pre Action Requirements (“PAR”) had been met. Had there been involvement with CAB earlier in the process then he may have been able to have assisted the Respondents. He noted that payment offers had not been accepted which he did not consider was the ethos of PARs. Mr Stanley disputed that he had not met with the PARs. He listed his involvement as per his submission. The Tribunal considered that this had met the PARs.
11. Mr Coull had raised in his submission that the rent increase in October 2023 was not lawful. On discussing this with him he reconsidered his position and now does not consider it unlawful.
12. Mr Cruden confirmed that he is to make a lump sum payment of £5400 at the end of October. He has been able to get business re-established and expects to have suitable funds to make the payment towards the arrears. Prior to 2019 his business had been very successful. It was affected by the change in regulations arising from Brexit. He has been able to resolve the issues and is once again working. He anticipates paying off the arrears by the end of January 2024.
13. The Tribunal queried if the Respondents had been looking for alternative accommodation. Mr Cruden said that he had been looking at other properties but had not found anything suitable. He has spoken to a housing officer at this local authority. There are a very few properties available to the local authority.
14. The Tribunal decided that it was appropriate to continue the case to a further CMD.
15. The case was continued to a further CMD to allow for Mr Stanley to provide a clear rent account to date showing the payments made and to be more reflective of when that had increased or decrease the arrears. It was also continued for Mr Coull to clarify when Universal Credit will end and for a payment plan to be assessed. A payment of £5400 is to be paid at the end of October. Given that this is caught by the Cost of Living (Tenant Protection) (Scotland) Act 2022 if an order was granted at this CMD it would not be able to be enforced until March 2023. As there has been no extension of that Act it is not prejudicial to continue the CMD.

The continued CMD

16. The continued CMD was held on 22nd January 2023 at 10am by teleconferencing. The Applicant was represented by Mr Thomas Stanley, Athene Associates Limited. The Respondents were not present but were represented by Mr Mark Coull, Haddington Citizens Advice Bureau.

17. Mr Coull told the Tribunal that a payment of £4000 had been made on Friday 19th January 2024. There had been some discussion between parties at the CMD as to whether this included the rent payment which was due to be paid on that date. Mr Stanley said that there was no rent payment made. Mr Coull was told by the Respondents that this payment did not include the rent payment and was solely towards the arrears. As a consequence of this payment the arrears are now £5597. Mr Coull said that matters have progressed with the First Named Respondent's business. He now anticipates being able to pay of the remaining arrears on 31st May 2024 failing which he will pay it off on 30th June 2024. The Respondents are to move out of the Property on 31st May 2024 if not before. The conjoined payment case is to continue to a date for the week commencing 10th June 2024 Mr Coull said that the Respondents will pay £100 per month to the arrears. Mr Coull said that the Respondents do not want to have any order granted against them. They are looking at new properties outwith the area. The First Named Respondent is paid quarterly and will get his next payment in the second half of April. Some of this money is going to be used towards the deposit for the new property.
18. Mr Coull anticipates that the First Named Respondent will be in a better financial position going forward. This means that he will be able to pay the rent and will not require the DHP. However, Mr Coull was not able to guarantee that to the Tribunal as points are still being finalised with the First Respondent's business.
19. Mr Stanley said that he was still concerned that the Respondents would continue to be in the Property without an end date. He is content to not enforce an order until 31st May 2024 to allow the Respondents to move out the Property in their time scale. The Tribunal noted that it has the power to supersede the extract until 31st May 2024. Mr Stanley was content for that to occur.
20. The Tribunal did not consider it to be reasonable to continue to another date in mid June with the conjoined case. The Respondents have not reduced the arrears until the payment on the Friday before the Monday CMD. It remains unclear what has happened to the rent payment for January. The Respondents did not make the payment offered at the end of October 2023. There was no full explanation as to why this was offered and not paid. The payment of £4000 was a loan. There is no guarantee of the Respondents ability to pay the rent going forward as they may be refused the DHP when they are reassessed at the beginning of the new financial year in April. There is no guarantee of the First Named Respondent's income going forward. Continuing this to a further date would mean that the Applicant would still have to wait for a further 30 days before getting their order and then would need to wait for the notice period of that order to expire. This would take the Applicant to nearly August before an eviction could be executed. As the rent charge is £1800 this means that the arrears could easily accrue significantly further especially given that payment proposals have been broken. The Respondents were first notified of this judicial process in June 2023. The Notice to Leave was served by email on 13th March 2023. The Respondents have not addressed the arrears until three days before the CMD and there are still significant arrears. The Tribunal granted the order

but considered that it was appropriate to supersede the extract to 31st May 2024 to allow for the Respondents to move out of the Property.

Findings and reason for decision

21. A Private Rented Tenancy Agreement commenced 11th July 2019.
22. The Respondents have persistently failed to pay their rent charge of £1800 per month. The rent payments are due to be paid on 11th day of each month.
23. Arrears accrued to more than three months rent payment at the date of application and was more than one month's rent payments at the date of the CMD.
24. There are no outstanding Universal Credit Housing Element issues. Universal Credit is in payment with a Discretionary Housing Payment being paid by the local authority.
25. The Respondents had offered to pay £5400 at the end of October 2023. This payment was not made. There was a payment of £4000 paid but this was not clear if this included the monthly rent charge or not as the rent charge had not yet been paid meaning that it was late. Offers of payment of £200 per month had been made but have not been paid.
26. The arrears are admitted by the Respondents. The arrears are substantial.
27. The Respondents intend to leave the Property by 31st May 2024 if not before. However, there is no guarantee that they will be able to remove themselves from the Property at this point. The Order is to be superseded to 31st May 2024 to allow for the Respondents to move out.
28. There are no issues of reasonableness that prevent an order from being granted.

Decision

29. The Tribunal found that ground 12 has been established and granted an order in favour of the Applicant. The extract is superseded until 31st May 2024.

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.



22nd January 2024

Legal Member/Chair

Date