



Decision with Statement of Reasons 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/23/2307

Re: 39 Kirkton Gate, East Kilbride, G74 1NF ("the Property")

Parties:

Heather Gardner residing at 1 Langholm, East Kilbride, G75 8YE ("the Applicant")

John McKeown, Jackson Boyd, solicitors ('The Applicant's Representative')

Michelle Dawson residing at 39 Kirkton Gate, East Kilbride, G74 1NF ("the Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) Gerard Darroch (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.

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 10th July 2023. The application states that the grounds for eviction are as follows:

Ground 4: The Landlord intends to live in the let Property.

Ground 4A: The Landlord intends to live in the let property to alleviate financial hardship.

Ground 11: Tenant has breached terms of tenancy agreement. Rent Arrears and denial of access for inspection and maintenance checks.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 30th September 2022. The commencement date of the tenancy was also 30th September 2022.
- Previous Housing and Property Chamber decisions involving the Respondent.
- A rent statement showing arrears of rent of £2096.77 as at 1st July 2023.
- A rent statement showing arrears of rent of £5850 as at 1st December 2023.
- An email from South Lanarkshire Council dated 3rd April 2023 addressed to the Applicant regarding conditional offer of employment as a teacher of drama.
- An email from the Applicant's representative to the Respondent dated 12th April 2023 sending her notice to leave and vacating instructions.
- Notice to Leave dated 12th April 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 8th July 2023 and the ground of eviction is that the Landlord intends to live in the Property.
- Recorded delivery slip confirming posting date was 12th April 2023 and the letter was delivered on 2nd May 2023.
- Email from the Applicants' Representative to the Applicant explaining that they will advise the Tribunal that they are only insisting on Ground 4 as this is the only ground relied on in the Notice to Leave.
- Email from East Kilbride Housing Team dated 10th July 2023 addressed to 'Lettings' and which states that the enquiry has been received and is receiving attention.

2. Written Representations on behalf of the Applicant.

The Applicant's solicitor sent the Tribunal an email dated 4th January 2024 and attached an affidavit by the Applicant also dated 4th January 2024 in the following terms:

2.1 The Applicant is a teacher employed by South Lanarkshire. She currently lives with her parents.

2.2 The Applicant purchased the Property with the intention of living in it. It is the only Property she owns.

2.3 After buying the Property the Applicant was offered a job in Dubai. She accepted the job and worked in Dubai for two and a half years.

2.4 Whilst the Applicant was in Dubai she let the Property through her agents, Bensons Sales and Letting.

2.5 The Applicant returned to Scotland in July 2023 with the intention of living in the Property.

2.6 Bensons served notice on the Tenant explaining that she intended to live in the Property as she was returning from abroad. Unfortunately, although the notice has expired the Tenant has not vacated the Property and the Tenant has not paid any rent since May 2023. The rent arrears currently amount to £5850.

2.7 The Applicant's job in a South Lanarkshire school is a permanent job and she intends to occupy the Property as her only home for at least three months.

2.8 The Applicant's mortgage payments are approximately £406 per month and the Factor's fees are approximately £66 per month.

3. Written Representations by the Respondent.

3.1 The Respondent sent written representations to the Tribunal by email dated 29th November 2023. The written representations relate to this eviction application, the separate application for payment (FTS/HPC/CV/23/2308) and a counterclaim application submitted to the Tribunal which has still to be accepted by the Tribunal as a valid application.

A summary of the written representations is as follows:

3.1.1 At the commencement of the lease the Property was not wind and water tight and consequently it breached the Repairing Standard. In addition, the inventory was not correct. Consequently, the lease should not have been granted, it was not legal and consequently there is no legal basis for the claims made.

3.1.2 The application is malicious and vexatious and the applicant has breached the respondent's legal rights by misusing their data to conduct third party searches about them which is in breach of data laws and GDPR.

3.1.3 There are no rent arrears as there is no legally binding tenancy agreement. In addition the Respondent is due to be reimbursed £1500 as her employer deducted this amount from her salary due to time she had to spend away from her work in relation to repairs matters.

3.1.4 The electrical meter at the Property was not set up properly.

3.1.5 The Respondent reported an electrical repair that was required and the repair has not yet been completed.

3.1.6 There are no legal points raised by the Appellant. The points made by the Applicant are full of malicious and defamatory (sic) statements about the Respondent in a deliberate attempt to discredit and humiliate her. Ninety five percent of the application is made up of data obtained by breaching the Respondent's legal rights under data laws and the data has been used outwith the purpose it was provided for.

3.1.7 The Respondent is registered with the Local Authority for housing and she is on the waiting list for temporary accommodation. The Respondent has medical needs that needs the provision of refrigerated services for medication and therefore she must be housed where such provision is available.

3.1.8 The Letting Agent was served with a Data subject access request that has not been complied with.

3.1.9 Article six of the European Convention of Human Rights has been breached due to the data breaches and the data breach.

3.1.10 Remedies sought by the Respondent:

3.1.10.1 The Applicant's claims to be struck out.

3.1.10.2 The Respondent compensated for costs/ expense.

3.1.10.3 The Respondent's deposit returned without delay.

3.1.10.4 The Tribunal service should report the Landlord to the Local Authority for removal from the Landlord register as the Landlord is not a fit or proper person to be a landlord due to her lack of knowledge in relation to the legal responsibilities due to the tenant.

3.1.10.5 The Tribunal should report the Letting Agent to the Scottish Ministers for breaching the Letting Agent Code of Practice.

3.2 The Respondent sent written representations to the Tribunal by email dated 5th January 2024. A summary of the written representations is as follows:

3.2.1 The affidavit was submitted by a different representative from the Appellant's representative who submitted the original application.

3.2.2 The affidavit does not include any new information.

3.2.3 A signed statement by the Applicant does not carry any more weight than the original application.

3.2.4 An affidavit would not be submitted at this stage of the legal process and cannot be used or considered.

3.2.5 The affidavit does not comply with judicial process or Article 6 of the European Convention of Human Rights.

3.3. The Respondent sent the Tribunal an email dated 5th January 2024 and was sent at 21.57pm. The email was in the following terms:

'I have found a case management discussion dated the 8th January 2024 online with my name against it, copy attached. I have received no information from the Tribunal service about any case management discussion or any details about joining in. Why is this listed and I have no knowledge of it? I would not be available at such short notice. There's 2 cases listed and I am not aware of any case management discussion on either. Why have I received no invite to these or any notification? These will have to be rescheduled as I have not been notified.'

4. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 8th January 2024.

The Applicant and her Representative John McKeown attended the CMD.

The Respondent did not attend the CMD.

4.1 Preliminary Matters

4.1.1 The Tribunal considered whether or not to continue with the CMD in the absence of the Respondent. Procedure Rule 29 permits the Tribunal to proceed on being satisfied that the Respondent has been notified of the CMD.

Mr McKeown advised the Tribunal that it was his position that the Tribunal could proceed as the Respondent had been advised of the CMD and the Sheriff Officer's certificate of citation is among the papers.

The Tribunal acknowledged that the letter to the parties advising them of the date and time of the Case Management Discussion was dated 9th November 2023. The letter also advised the Respondent that written representations should be received by 30th November 2023. The Respondent sent the Tribunal an email dated 29th November 2023 and attached her written representations and referred to the fact that they were due by 30th November 2023.

The papers include a certificate of intimation by Stewart MacLaren, Sheriff Officer dated 10th November 2023 which confirmed that on 10th November 2023 at 11.15 am he served the Respondent with the documents he had been sent by the Tribunal Administration to be served on the Respondent namely:

- (i) A copy of the case papers.
- (ii) Letter to the Respondent with enclosures.
- (iii) Guidance Notes.
- (iv) Time to Pay Direction Application.
- (v) Accessibility Requirements Questionnaire.

- (vi) Data protection principles.
- (vii) Documentary Evidence Guidance.

The Tribunal considered the Respondent's representations that she had not been notified of the CMD. However, in light of the fact the Certificate of Intimation by Stewart MacLaren, Sheriff Officer and the fact that the Respondent had timeously lodged written representations as directed in the letter to her dated 9th November 2023 which included details of the CMD the Tribunal did not accept the Respondent's assertion that she had not been notified of the CMD and proceeded with the CMD despite the absence of the Respondent.

4.1.2 The Tribunal referred Mr McKeown to the fact that the Affidavit by the Applicant had been sent to the Tribunal by email on 4th January 2024 and in terms of the Procedure Rules it should have been received a minimum of seven days before the CMD.

Mr McKeown explained that the affidavit had been lodged late due to the Christmas break and it had been sent to the Tribunal on the first day that he had returned to business. He also explained that the Affidavit does not contain any new information that was not detailed in the application. The Respondent has provided the Tribunal with representations after she received the affidavit. She has had an opportunity to consider the affidavit and the Respondent herself refers to the fact that the affidavit does not provide any new information.

The Tribunal accepted Mr McKeown's explanation for lodging the affidavit late and were satisfied that he had a reasonable excuse for lodging the affidavit late. The Tribunal were also satisfied that the Respondent was not prejudiced by the late submission as she had provided the Tribunal with her written representations in response to the affidavit.

4.1.3 Mr McKeown advised that notwithstanding the terms of the application he was only proceeding on the basis of Ground 4 (The Landlord intends to live in the Let Property).

4.2 Oral submissions by Mr McKeown.

Mr McKeown advised that it is his submission that there is sufficient information before the Tribunal to enable it to grant the eviction order sought on the basis that the Applicant intends to reside in the Property.

Notice to Leave was properly served on the Respondent by post, email and recorded delivery letter. Clause four of the lease permits notices to be served by email. The current rent arrears amount to £5850. The Applicant lived and worked in Dubai for two and a half years. This property is the only property she owns. She is presently living with her parents which is not a long term solution. The Applicant did not buy the Property with a view to renting it out. She is not a landlord by trade. Her circumstances have changed as she now has a permanent teaching position. It is reasonable for the eviction to be granted as this is the Applicant's only property, it is situated in close proximity to her job and family and the respondent's conduct by not paying rent since the Notice to Leave was served on her.

In connection with the Respondent's representations they are largely concerned with rent arrears and the condition of the Property. She has made no representations as to the validity of the Notice to Leave or the validity of the application in relation to Ground Four. The Respondent's representations are not accepted and they generally lack specification. As far as he is aware the Respondent resides in the Property alone. In connection with her suggestion that she needs a fridge for medical reasons he confirmed that the fridge in the Property is a standard domestic fridge. The Property has not been adapted for disabilities.

4.3 Oral submissions by the Applicant.

She occupied the Property before she took up her job in Dubai. The Respondent was made aware that she was employed on a fixed contract.

5. Decision

5.1 The Tribunal made the following findings in fact:

5.1.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 30th September 2022.

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

5.1.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate LAN98989. Section B of the Land Certificate confirmed that the Applicant is heritable proprietors of the Property.

5.1.4 The Notice to Leave was served on the Respondent by email dated 12th April 2023 and advised the Respondent that an application would not be made to the Tribunal before 8th July 2023.

5.1.5 The Notice to Leave advised the Respondent that the Applicant intended to live in the Property.

5.1.5 Clause 4 of the lease states that notices can be served by email.

5.1.6 The email address the Notice to Leave was sent to was the Respondent's email address detailed in the lease.

5.1.7 The Applicant has secured a permanent teaching position with South Lanarkshire Council and intends to live in the Property for at least three months.

5.1.8 The Applicant resided in the Property before she leased it to the Respondent.

5.1.9 The only property owned by the Applicant is 39 Kirkton Gate, East Kilbride, G74 1NF.

5.1.10 The Applicant presently resides with her parents.

5.1.11 The Respondent resides in the Property alone.

5.1.12 The Respondent has not paid the Applicant rent since 3rd April 2023.

5.1.13 The section 11 notice was acknowledged by South Lanarkshire Council by email dated 10th July 2023.

5.1.14 The Respondent is registered with the Local Authority for housing and she is on the waiting list for temporary accommodation.

5.1.15 The fridge in the Property is a standard domestic fridge.

5.2 Requirements of Section 109 of the Procedure Rules.

5.2.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application that is being relied on by the Applicant is the ground that the Applicant intends to live in the Property.

The Tribunal accepted that this is Ground 4 of Schedule 3 of the 2016 Act.

5.2.2 The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The Tribunal accepted the following evidence as being sufficient in its terms:

- (A) The Affidavit by the Applicant dated 4th January 2024.
- (B) The email from the Applicant to Benson Estate Agents dated 6th April 2023 confirming that the Applicant has secured a job with South Lanarkshire Council and that she intends to move into her property and
- (C) The email from South Lanarkshire Council to the Applicant dated 3rd April 2023 confirming her permanent job offer.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 12th April 2023 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 8th July 2023.

The Tenancy commenced on 30th September 2022. As at 12th April 2023 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months. The application for eviction was based on Ground 4 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required.

Clause 4 of the lease authorised notices to be sent by email. The Landlord served the Notice to Leave on the Tenant by email on 12th April 2023 and correctly gave the Tenants a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal accepted that the email from South Lanarkshire Council dated 10th July 2023 was confirmation that the required notice had been sent to the Local Authority.

5.2.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

5.3 The Tribunal considered the Respondent's written representations. Their response is as follows:

5.3.1 The Respondent alleges that the Property did not comply with the repairing standard and as a result the lease is invalidated. This is not correct. A lease is not invalidated if the condition of a property does not meet the repairing standard.

5.3.2 Any complaint about misusing the Respondent's data should be submitted to the Information Commissioner's Office.

5.3.3 The Respondent has not sufficiently evidenced her claim that there are no rent arrears.

5.2.4 The Tribunal do not accept that Article six of the European Convention of Human Rights has been breached due to the alleged data breaches and the data breach.

5.3.4 The Affidavit by the Applicant is valid.

5.3.5 The Tribunal would not report a Landlord to Landlord registration on the basis of unsubstantiated claims.

5.3.6 If the Applicant believes that the Letting Agent has breached the Letting Agent Code of Practice a separate application should be made to the Tribunal.

5.3.7 The application is not defective due to the Applicant changing her representative.

5.4 The Tribunal found that the Applicant had met the requirements of Ground 4 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 as the documents detailed at paragraph 5(b)(i) hereof are sufficient evidence that the Applicant intends to live in the Property for at least three months.

5.5 The Tribunal considered the parties representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

5.6 The Tribunal weighed the respective positions of the parties. They found that it was reasonable for the eviction order to be granted due to the following facts:

5.6.1 The fact that the Applicant is residing with her parents and the arrangement is temporary.

5.6.2 The fact that the Applicant needs to reside in the Property as she is permanently employed by South Lanarkshire Council Respondent.

5.6.3 The fact that the Respondent has not paid any rent since 3rd April 2023 and the Applicant has mortgage payments and factoring fees to pay in relation to the Property.

The Tribunal determined that these facts weighed in favour of the eviction being granted as the Respondent's is registered with the Local Authority for housing and she is on the waiting list for temporary accommodation.

The Tribunal considered the Respondent's written representations that she has medical needs that requires the provision of refrigerated services for medication and that she must be housed where such provision is available. The Tribunal gave little weight to this as the Respondent did not provide any evidence to support this statement and no explanation as to why a standard domestic fridge would be insufficient.

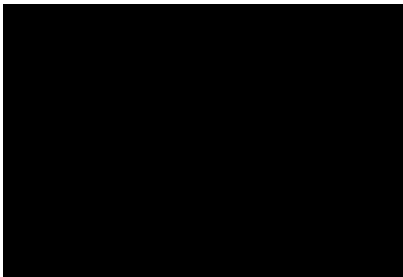
5.7 Accordingly, the Tribunal found in law that the ground Four in Schedule 3 of the 2016 Act was met.

5.8 The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the Notice to Leave was served on the Respondent after 6th September 2022 and the application was received by the Tribunal after 28th October 2022.

5.9 Consequently the Tribunal determined that the order for possession of the Property be granted as Ground 4 of Schedule 3 of the 2016 Act had been met.

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.



8th January 2024

Legal Member