



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/EV/23/3567

Re: Property at 22 Haremos Drive, Portlethan, Aberdeenshire, AB12 4UX (“the Property”)

Parties:

Mr Michael Stoddart, Mrs Rachel Stoddart, UNKNOWN, UNKNOWN; 350 Shedgum Avenue, Dhahran Camp, Saudi Arabia (“the Applicant”)

Mr Edward Wyllie, 22 Haremos Drive, Portlethan, Aberdeenshire, AB12 4UX (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By Lease dated 14th April 2023, the Applicants let the property to the Respondent. The start date of the tenancy was 21st April 2023.
2. The rent payable is £1,695.00 per month, payable monthly and in advance.
3. A notice leave dated 26th July 2023 was served upon the Respondent. The notice to leave stated the Applicants were seeking possession of the Property as they intended to sell the let Property (Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
4. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
5. On 6th October 20223 the Applicants presented an application to the Tribunal seeking an order for eviction. The application to the Tribunal stated the following eviction grounds: -
Ground 1 - Landlord intends to sell the let Property.

Ground 11 – Tenant has breached terms of the tenancy agreement.

Ground 12 – It is in rent arrears over three consecutive months.

THE CASE MANAGEMENT DISCUSSION

6. The Case Management Discussion was assigned to be held by teleconference at 2pm on 26th February 2024. The Applicants were represented by Miss L Low of Messrs DJ Alexander, letting agents (formerly Stonehouse Lettings). The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
7. Miss Low moved the Tribunal to grant an order for eviction in terms of Ground 1 of schedule 3 of the 2016 Act. Separately, Miss Low asked the Tribunal to allow an additional ground to be included, that being Ground 12, rent arrears.
8. It was noted by the Tribunal, and was accepted by Miss Low, that the only ground of eviction stated within the notice to leave was Ground 1. In reference to Ground 11 referred to within the application to the Tribunal – breach of tenancy agreement – this appeared to refer to non payment of rent. The reference to Ground 12 related, of course, to arrears of rent which existed at the time of the application and also the date of the Case Management Discussion. As at the date of the Case Management Discussion the Tribunal was advised the arrears of rent amounted to £7,572.00.
9. The Tribunal considered the request to allow the application to include an eviction order on grounds of rent arrears. Having considered the request, the Tribunal refused that request. The notice to leave, as stated, referred to one ground of eviction only. While the Respondent did not participate in the Case Management Discussion, he is entitled to expect that the Tribunal will deal with the case in accordance with law and deal with the case justly. The Respondent would be entitled to expect the Tribunal to consider the case only on the basis of Ground 1 of schedule 3 of the 2016 Act. The Respondent has had no notice that the Applicants intended seeking to invite the Tribunal to allow an additional ground of eviction and, in the circumstances, the Tribunal did not consider it appropriate to consider an application for eviction on grounds of rent arrears.
10. In relation to the application in terms of Ground 1 - the Applicants intend to sell the Property - the Tribunal made enquiry of Miss Low. It would be fair to say that Miss Low appeared to be ill-

prepared to conduct the Case Management Discussion and did not have all relevant information to hand.

11. The Tribunal enquired as to why a lease which commenced in April 2023 resulted in a notice to leave being served in July 2023, indicating that the Applicants intended to sell the Property. What occurred within that three month period to cause such a significant change in approach from the landlords? The Tribunal was advised the Applicants wished to sell because the Respondent was in constant arrears of rent. The Tribunal challenged that assertion. While it is being suggested that there are arrears in excess of £7,500.00 at this stage, such arrears did not exist in July 2023. The Tribunal was then advised that the Applicants were selling due to financial hardship although the Tribunal was not provided with further information in relation to any such financial hardship, aside from what is referred to below.
12. Reference was made to damage which had been caused to the property by previous tenants and the cost of repair. Damage caused by a previous tenant and the cost of repair arising from, of course, can have no bearing upon the current tenancy.
13. Reference was made to the Applicants' portfolio, although, on further examination, the Tribunal was advised this was the only rental property owned by the Applicants. It would seem that the reference to the word "portfolio" was an inappropriate use of that word in this instance.
14. The Tribunal was advised the Applicants previously had another property of their own in which they lived. After further enquiry it became apparent that property was abroad. The Applicants also had this Property within Scotland which was being let out. The Applicants wished to return to Scotland to live, partly to enable their children to attend school in Scotland. They had sold their home abroad. Because this Property was being let out, however, they could not move back in to it. They returned to Scotland and required to live with family members. The Applicants were no longer living with family members and were living in rented accommodation. Again, however, it was only after further enquiry by the Tribunal it became apparent that the rented property in which the Applicants were now residing was abroad.
15. Given the Tribunal was advised the Applicants wished to return to Scotland, amongst other reasons, for the benefit of their children, the Tribunal made enquiry about the composition of the Applicants' family. The Tribunal was advised that Miss Low believed they had two children but she could not be certain about that and she did not know the ages of the children. When the Tribunal made enquiry as to the size and type of the Property presently being let, Miss Low did not have that information either. She believed it was a three bedroom home but could not be certain about that. When asked why the Applicants were not seeking to evict the tenant to live within the Property, again, there was no definite answer to that. It was suggested that the Applicants wished to sell the Property with a view to purchasing an alternative Property for themselves and their children.

16. The Tribunal had been provided with an invoice from a firm of surveyors in relation to the preparation of a home report required to facilitate a sale of the Property. The Tribunal was advised that, as far as Miss Low was aware, the home report had been completed. On the basis of the invoice from a bona fide firm of surveyors, the Tribunal was able to satisfy itself that the Applicants did, indeed, intend to sell the Property. Further comment on this is made at paragraphs 18 and 20 below.
17. While the Tribunal did not allow the application to proceed with an eviction order being granted on the basis of Ground 12, it did consider it appropriate to have regard to rent arrears in determining the issue of reasonableness of an order for eviction. The Tribunal was advised that rent arrears now amounted to £7,572.00. That is in excess of 4 months rental payments. There has been no engagement between the letting agents and the Respondent since at least September 2023. The letting agents have contacted the Respondent to discuss the level of arrears but have received no response from him. The letting agents have contacted the Respondent about repairs required at the Property. They have received no response from him. Miss Low advised that she assumed responsibility for the management of this Property during September 2023. Since then she has had no contact of any nature from the Respondent. As far as she is aware there has been no contact for a period of time before that.
18. Despite, the failure of the Respondent to engage with the lettings agents, the Tribunal was advised that surveyors had been afforded access to complete a home report. Miss Low advised the Tribunal that arrangements for that were made directly between the Applicants and the Respondent. No further information was provided to the Tribunal in relation to that particular aspect of the case.
19. In relation to the personal circumstances of the Respondent, again, the Tribunal was provided with little information. The Applicants' representative believed the Respondent "has a few businesses", but beyond that she knew nothing of him and had no information about his family composition, whether he had any children or, indeed, anything else about him.
20. As indicated previously, the information provided to the Tribunal was far from satisfactory. What was ascertained, however, is that the Applicants intend to sell the Property (evidence by obtaining a home report from bona fide surveyors), the rent arrears appear now to be at a significant level (an excess of £7,500.00) and the Respondent lodged no submissions with the Tribunal, did not participate in the Case Management Discussion and, therefore, did not present any opposition to the application. In the circumstances, the Tribunal concluded that it had sufficient information to enable it to grant the order being sought in terms of ground 1 of schedule 3 of the 2016 act.

FINDINGS IN FACT

21. The Tribunal found the following facts to be established: -
- a) By Lease dated 14th April 2023, the Applicants let the property to the Respondent. The start date of the tenancy was 21st April 2023.
 - b) The rent payable is £1,695.00 per month, payable monthly and in advance.
 - c) A notice leave dated 26th July 2023 was served upon the Respondent. The notice to leave stated the Applicants were seeking possession of the Property as they intended to sell the Property (Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)).
 - d) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
 - e) As at the date of the Case Management Discussion arrears of rent amounted to £7,572.00.
 - f) The Applicants have previously instructed surveyors to

REASONS FOR DECISION

22. The Tribunal refused a request to allow a ground of eviction which had not been included within the notice to leave to be considered at the Case Management Discussion. The Respondent was entitled to receive adequate legal notice of issues to be considered by the Tribunal. In the absence of Ground 12 of schedule 3 of the 2016 act being referred to within the notice to leave the Respondent was entitled to expect the Tribunal to consider only an eviction application on the basis of ground 1.
23. While the Tribunal did not allow the request to grant an eviction on the basis of rent arrears, the Tribunal still considered the level of arrears in relation to the issues of reasonableness when considering whether to grant an order for eviction.
24. In relation to Ground 1 - the landlord intends to sell - while the information provided was far from satisfactory in many respects, the Tribunal was satisfied, having regard to the fact that significant expense had been incurred in obtaining a home report, that the Applicants did intend to sell the Property.
25. Separately, having regard to the suggestion that arrears of rent amounted to in excess of £7,500.00, with no payments at all having been made for a number of months, and with the Respondent having failed to engage with the Tribunal process in any way at all, the Tribunal concluded that it was reasonable that an order for eviction be granted.

FURTHER COMMENT

26. It is with regret the Tribunal feels it necessary to comment in relation to the following matters but: -

- a) As will be clear from the comments above, the representative of the Applicants appeared to be ill-prepared for the Case Management Discussion. While an order was ultimately granted, the Tribunal asked numerous questions to which no clear response was received. The Tribunal was advised on many occasions that the representative did not know the answer, that she did not have her laptop or other information to hand and it appeared that in certain respects some responses given were speculation. While the Tribunal acknowledges that many persons appearing before it are not qualified solicitors, the Tribunal is still entitled to expect a reasonable level of preparation and knowledge of the case on the part of Parties and their representatives. That is, perhaps, all the more so when the representative is an employee of a letting agent who has been involved in Tribunal proceedings previously. The significance of an order for eviction, and the effect the grant or refusal of such an order may have upon Parties must not be underestimated. The Tribunal is entitled to expect those appearing before it to be aware of relevant facts and be in a position to answer questions relevant to the application and issues of reasonableness.
- b) A rent statement which had been submitted to the Tribunal was in an unusual format and was difficult for the Tribunal members to decipher. While, ultimately, the finer details of the rent statement were not a determining issue in the case, given the Tribunal did not allow a Ground 12 application to be considered, it should be noted that rent statements submitted to the Tribunal should be in a clear and easily understandable format. It should not be expected that Tribunal members will require to spend valuable time doing mathematical calculations for the benefit of Parties.

DECISION

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under Ground 1 of Schedule 3 of said Act.

Order not to be executed prior to 12 noon on 31 March 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the Tribunal's decision may wish to request a

Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the Tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



26 February 2024

Legal Member/Chair

Date