



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/22/3404

Re: Property at 18 Mossneuk Street, Coatbridge, ML5 5BA (“the Property”)

Parties:

Ms Catherine Hunter, 2A Westmount Park, Newtonards, County Down, BT23 4BP (“the Applicant”)

Ms Caroline McKinney, 18 Mossneuk Street, Coatbridge, ML5 5BA (“the Respondent”)

Tribunal Members:

Gillian Buchanan (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:-

At the Case Management Discussion (“CMD”), which took place by telephone conference on 20 February 2023, the Applicant was not in attendance but was represented by Mr John MacAulay of Ennova Law. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/3405.

In advance of the CMD that Tribunal had received from Mr MacAulay an email dated 17 February 2023 with attachments being an up to date rent statement and copies of letters sent by Ennova Law to the Respondent dated 15 December 2022 and 23 January 2023.

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 7 May 2019.
- ii. The rent payable in terms of the PRT was £695 per calendar month payable in advance on the seventh day of each month.
- iii. On 27 July 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 25 August 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £3,686.00.
- iv. By email dated 16 September 2022 the Applicant served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The rent arrears due as at the date of the application were stated to be £4,395.59.

The CMD

At the CMD the Applicant's representative made the following representations in respect of this application and the associated application FTS/HPC/CV/22/3405:-

- i. That the current rent arrears outstanding and due by the Respondent are £5,998.24.
- ii. The Respondent is still in occupation of the Property along with her two adult sons aged 19 and 22 years. The Applicant was not aware that the Respondent's adult sons were living with her.
- iii. The Respondent is not in employment. Her 19 year old son is also unemployed. Her 22 year old son has recently secured full-time employment.
- iv. In the tenancy questionnaire completed by the Respondent prior to the tenancy commencing she left her employment status blank and a Guarantor was therefore sought for the tenancy.
- v. On Friday 17 February at around 2pm Mr MacAulay had received from the Respondent an email to her from Mr Melvin, Housing Advice Network Officer an email advising that he had reached out to various bodies to see if he could obtain representation for the respondent at the CMD but had been unsuccessful. That communication also made reference to the Respondent being a formerly a taxi driver, to her being the victim of a serious assault from which she had difficulty recovering and to her having been refused a Discretionary Housing Payment.
- vi. The Respondent has been in receipt of Universal Credit since the second month of the tenancy. Universal Credit does not cover the rent payable by the Respondent to the Applicant and the arrears have doubled since March 2022. Mr MacAulay did not know if the Applicant was aware that the Respondent would be in receipt of Universal Credit prior to the tenancy commencing. Universal Credit is paid directly to the Applicant.
- vii. With regard to the pre-action protocols these were not complied with prior to the application to the tribunal being lodged but on the involvement of Ennova Law for the Applicant letters were sent (albeit late) in appropriate terms of 15 December 2022 and 23 January 2023 which should be taken into account. The Respondent did not answer those letters.
- viii. No time to pay application has been made by the Respondent.
- ix. The Applicant seeks an eviction order.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 7 May 2019.
- ii. The rent payable in terms of the PRT was £695 per calendar month payable in advance on the seventh day of each month.
- iii. On 27 July 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 25 August 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £3,686.00.
- iv. By email dated 16 September 2022 the Applicant served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The rent arrears due as at the date of the application were stated to be £4,395.59.
- vi. That the current rent arrears outstanding and are £5,998.24.
- vii. The Respondent is still in occupation of the Property with her two adult sons.
- viii. The Respondent and her 19 year old son are unemployed.
- ix. The Respondent's 22 year old son is in full-time employment.
- x. The Respondent is in receipt of Universal Credit but the payments fall short of the rent due to the Applicant in terms of the PRT.
- xi. The Respondent's application for a Discretionary Housing Payment has been refused.
- xii. The Respondent has failed to engage with the Applicant.
- xiii. That it reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and on her behalf orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order.

The Tribunal considered in particular whether the Applicants had complied with the pre-action protocols referred to in Schedule 3, Ground 12, paragraph 4(b) of the 2016 Act. Whilst the Tribunal took the view that the Applicant had not so complied the Tribunal, had regard to the fact that the Respondent had made an application for a Discretionary Housing Payment which was refused, that she had received support from Mr Melvin, Housing Advice Network Officer and that she had received letters from Ennova Law in December 2022 and January 2023 which, albeit late, signposted her to sources of financial help and support. The tribunal therefore determined that it is reasonable to grant an eviction order under Ground 12 of Schedule 3 of the 2016 Act.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.



Legal Member/Chair

20 February 2023
Date