



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/19/2373

Re: Property at 65 Hammerman Drive, Hilton, Aberdeen, AB24 4SF (“the Property”)

Parties:

Mr Bassam Alkari, Mrs Abir Alchikh, 182 North Deeside Road, Milltimber, AB13 0HL; 182 North Deeside Road, Milltimber, Aberdeen, AB13 0HL (“the Applicant”)

Mr Aleem Baig, 65 Hammerman Drive, Hilton, Aberdeen, AB24 4SF (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

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

Background

This is an application for eviction and recovery of possession under section 51(1) of the Act and Rule 109 of the Tribunal Procedure Rules. The Applicants seek eviction under Grounds 11 and 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 29 July 2019;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 20 March 2018;
3. Rent Statement;
4. Notice to Leave dated 22 May 2019;
5. Sheriff Officer Certificate of Service of Notice to Leave dated 23 May 2019;

6. Section 11 Notice to Local Authority;

Case Management Discussion (CMD)

The case called for a CMD on 19 February 2020. It had previously been postponed on the application of the Respondent from 13 January 2020. No written representations had been received from the Respondent in advance of the CMD.

The Applicants appeared in person and were represented by their Property Manager, Ms Barclay. The Respondent attended the Hearing Centre but did not attend the CMD. The Respondent's representative, Mr Khan appeared for him. Mr Khan explained that the Respondent was not well enough to attend due to suffering from depression and mental illness.

The Tribunal heard from both Parties with regard to the application. Mr Khan sought to advance a defence on the part of the Respondent to the effect that the Respondent had withheld rent since February 2019 due to the Applicant's breach of Clauses 23 of the PRTS which relates to Data Protection and that the Tribunal could not grant an order for eviction as to do so would be discrimination and in breach of Clause 22 which dealt with Equality Requirements under the Equality Act 2010 due to the Respondent's disability.

Dealing with Clause 23 first, Mr Khan's submission was that rent had been withheld due to the Applicants telling the Respondent's Iman and other parties known to the Respondent that he had failed to pay his rent. This was use of his personal data and in breach of the PRTA. The Respondent had asked the Applicants not to tell anyone about his failure to pay rent. He had not put the Applicants on notice that he was withholding rent for this reason.

The Applicant's position was that they had spoken with the Iman as he had been a referee for the Respondent in his lease application. They had not spoken to anyone else.

The Tribunal did not consider that this amounted to even a prima facie defence to the application for eviction. By the Respondent's own admission he was in arrears of rent (and consequently in breach of the PRTA terms) before there was any breach (even if it were to be accepted there was a breach) by the Applicants. Further, no application had been made by the Respondent against the Applicants in respect of the alleged breach and he had not put the Applicants on notice he was withholding rent for this reason.

The Tribunal also noted that this purported defence was being advanced for the first time at the CMD despite the Respondent having postponed the previous CMD, being represented and not having lodged any written submissions.

The Tribunal considered that there was no relevant basis to this alleged defence.

With regard to Clause 22 of the PRTA, Mr Khan submitted that the Tribunal should adopt a structured approach and should not grant an immediate eviction order under reference to the Supreme Court Decision of ***Akerman-Livingstone v Aster***

Communities Limited in 2015. In his submission the Tribunal could not grant an order at this stage as that would be discriminatory. The Respondent was disabled. The Tribunal considered the decision in **Akerman** and noted that **Akerman** was distinct in that it dealt with Social Housing rather than a Private Residential Tenancy as was the case here.

In any event the Tribunal was satisfied that it did not prevent the Tribunal making a decision in this case at the CMD provided that it had sufficient information to do so, the procedure had been fair, the disability did not give rise to or have some connection with the eviction and/or the eviction was plainly a proportionate means of achieving a legitimate aim.

There was no suggestion that the application arose as a consequence of the Respondent's disability. The application arose as a consequence of the Respondent's significant rental arrears. The Respondent had been in arrears since February 2019, £9,600 of rent was now due and the Notice to Leave had been served on 22 May 2019. The Respondent had notice of the Tribunal proceedings and had postponed the previous CMD. He was represented and had not raised this issue before the CMD.

The Tribunal then proceeded to make the following findings in fact:

1. The Parties entered in to the PRTA commencing 20 March 2018;
2. The monthly rent was £800;
3. As at the date of service of the Notice to Leave on 23 May 2019 the Respondent was £2,400 in arrears;
4. Section 11 Notification had been given to the local authority;
5. As at the date of the CMD the Respondent was £9,600 in arrears (which was in excess of 3 consecutive months and in excess of 1 months rent);
6. The Respondent was self-employed and was applying for benefits;
7. The failure to pay rent was not due in whole or in part to any delay or failure to pay a relevant benefit;
8. The Respondent's disability did not give rise to or have a connection with the eviction application which was due to rent arrears.

The Tribunal was satisfied that it had sufficient information to determine the case at this stage and the procedure was fair. The Tribunal considered and found that both Grounds 11 and 12 were established. Ground 11 was a discretionary ground whereas Ground 12 was a mandatory Ground. The Respondent was in significant arrears. The arrears and the eviction process did not arise as a consequence of the Respondent's disability.

The Tribunal accordingly granted the order for eviction and recovery of possession under Ground 12.

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.

Alan Strain

Legal Member/Chair

19 February 2020

Date