



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/22/0147

Re: Property at 23 Newhalls Road, South Queensferry, EH30 9TA ("the Property")

Parties:

Ms Caroline Bell, 10 Ashburnham Loan, South Queensferry, EH30 9LE ("the Applicant")

Mr Kenneth Greig and Mrs Janet Greig, 23 Newhalls Road, South Queensferry, EH30 9TA ("the Respondents")

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 19 April 2022, the Applicant was in attendance and was represented by Ms Jill Cartwright of Fineholm Letting Services (Edinburgh) Limited (Fineholm"). The First Respondent, Mr Kenneth Greig, was also in attendance in his own right and on behalf of his wife, the Second Respondent.

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

Background

The following facts were noted by the Tribunal and were not in dispute between the parties:-

- That the Applicant is the heritable proprietor of the Property.
- That on 11 October 2019 the Applicant entered into a Private Residential Tenancy Agreement with the Respondents ("the Tenancy Agreement").
- That in terms of the Tenancy Agreement the tenancy commenced on 14 October 2019.
- That the rent payable by the Respondents in terms of the Tenancy Agreement is £1150 per calendar month payable in advance on the 14th day of each month.

- That on 14 July 2021, on the instructions of the Applicant, Fineholm served on the Respondents by email a Notice to Leave requiring the Respondents removal from the Property on or before 18 January 2022.
- That Notice to Leave was served by reference to Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, namely that the Respondents had been in arrears of rent for at least 3 consecutive months.
- That Fineholm emailed City of Edinburgh Council a notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- That the arrears of rent due by the Respondents to the Applicants as at the date of the CMD amounted to £9,325.07.
- That between the last date on the Tenancy Transaction Report attached to the application (19 January 2022) and the date of the CMD the following payments had been received towards rent due:-
 - 7 February 2022 - £365.40 Universal Credit;
 - 1 March 2022 - £1150 from the Respondents; and
 - 28 March 2022 - £1150 from the Respondents.

The CMD

At the CMD Ms Cartwright and the Applicant made the following representations:-

- i. That within the last few days the First Respondent made an offer to pay an additional sum of £400 per month in addition to the ongoing monthly rent to clear the arrears accrued. However, at that rate the arrears balance would take two years to repay in full.
- ii. That the Applicant has no idea from where the Respondents would find the funds to make the payments proposed and therefore has no confidence that the payments promised would be maintained.
- iii. That the Respondents have previously agreed repayment plans and have not stuck to them. For example, in July last year an agreement was reached but only one payment of £500 was made.
- iv. That the tenancy deposit paid by the Respondents at the outset of the Tenancy Agreement remains with the deposit scheme.
- v. That Universal Credit payments are normally received around the end of each month and therefore it would appear that Universal Credit payments have stopped as no payments have been received in respect of the months of March or April 2022.
- vi. That it is reasonable that an eviction order should be granted in the circumstances.

In response to the representations of the First Respondent the Applicant made further submissions as follows:-

- i. That the First Respondent's representations with regard to potential employment are contradictory in that he initially referred to being in "advanced talks" but subsequently made reference to discussions about salary being "early".
- ii. That the First Respondent initially stated that a decision on his potential employment would likely be made within a period of 10 to 14 days but later said it would take 3 to 5 weeks.
- iii. That with regard to potential employment, the Applicant heard the same "story" from the Respondents last Summer and simply does not believe the position to be

as stated. (The First Respondent did not deny having such a conversation last year.)

- iv. That it was the Applicant's agent who had advised the Respondents to apply for Universal Credit which, initially, the Respondents received directly and did not pay to the Applicant in reduction of the arrears accrued
- v. That with regard to the configuration of the Property, it is a three bedroomed property with a lounge/dining room and kitchen.
- vi. That the Property as a garden flat with reasonably sized rooms.

At the CMD the First Respondent made the following representations:-

- i. That the Respondents resumed it paying rent in February 2022 and that they have offered to pay £400 per month in addition towards the arrears. That offer was made within the last few days prior to the CMD.
- ii. The Second Respondent now has a full-time job within Boots' Opticians and the First Respondent is seeking a full-time position as a PR consultant.
- iii. That the Second Respondent receives a monthly salary of £1450 from her employment. The First Respondent initially stated that the monthly salary was £1700 to which the Applicant objected.
- iv. That once the First Respondent begins work again, the Respondents will be in a position to increase the payments towards the arrears to £750 per month, probably from September this year.
- v. That the First Respondent has 30 years experience as a PR consultant. He is in advanced discussions with a major hospitality provider and hopes to hear as to whether or not a position is available within the next 10 to 14 days. The First Respondent stated that he would prefer not to disclose the identity of the potential employer but he had done work for them previously and got on well with the owner.
- vi. That the First Respondent is in early discussions with regard to the salary. He would be working on a self-employed basis and his minimum monthly retainer is £1250 per month gross.
- vii. That the anticipated employer has around 18 outlets in Scotland and owns a major golf club too.
- viii. That if successful in securing a position, the First Respondent anticipated beginning within 3 to 5 weeks from now.
- ix. A written contract would be entered into which would continue on a rolling basis with three months' notice being required to terminate that contract. That is the way in which the First Respondent has always operated.
- x. That the First Respondent specialises in securing press coverage in the business pages of the Scotsman and the Herald newspapers. In the past he has acted for big law firms and a major housebuilder amongst others. He would normally have more than one contract at any one time.
- xi. That the Respondents' income was steady pre-pandemic and payment of rent in respect of the property was flawless.
- xii. That the Respondents occupy the Property alone. They have no children.
- xiii. That parts of the Property are not in use.
- xiv. After initially stating that the Property comprised of one bedroom and after an immediate objection from the Applicant, the Tribunal eventually ascertained from the First Respondent that the Property comprises a kitchen, bathroom, main lounge, additional sitting-room, one bedroom and a boxroom.

- xv. That the Respondents have applied for financial assistance from the Tenant Grant Fund. That application was made by the Second Respondent around 2 to 3 months ago and they expect to hear in response within 10 to 14 days. They have been advised that the application "should be okay" and that a payment of £4500 might be received all of which would be paid to reduce the arrears.
- xvi. That Universal Credit was paid to the Second Respondent and the First Respondent did not know if monies had not been paid to the Applicant.
- xvii. That the First Respondent believed Universal Credit was still being paid.

Findings in Fact

The Tribunal found following facts to be established:-

- i. That the Applicant is the heritable proprietor of the Property.
- ii. That on 11 October 2019 the Applicant entered into a Private Residential Tenancy Agreement with the Respondents ("the Tenancy Agreement").
- iii. That in terms of the Tenancy Agreement the tenancy commenced on 14 October 2019.
- iv. That the rent payable by the Respondents in terms of the Tenancy Agreement is £1150 per calendar month payable in advance on the 14th day of each month.
- v. That on 14 July 2021, on the instructions of the Applicant, Fineholm served on the Respondents by email a Notice to Leave requiring the Respondents removal from the Property on or before 18 January 2022.
- vi. That Notice to Leave was served by reference to Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, namely that the Respondents had been in arrears of rent for at least 3 consecutive months.
- vii. That Fineholm emailed City of Edinburgh Council a notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- viii. That the arrears of rent due by the Respondents to the Applicants as at the date of the CMD amounted to £9,325.07, being more than 8 months rent.
- ix. That between the last date on the Tenancy Transaction Report attached to the application (19 January 2022) and the date of the CMD the following payments had been received towards rent due:-
 - 7 February 2022 - £365.40 Universal Credit;
 - 1 March 2022 - £1150 from the Respondents; and
 - 28 March 2022 - £1150 from the Respondents.
- x. That with regard to the configuration of the Property, it is a three bedroomed property with a lounge/dining room and kitchen.
- xi. That the Respondents fell into arrears in paying rent in January 2021 but their financial difficulties began in August 2019 some months before the COVID19 pandemic.
- xii. That in July 2021 the Respondents entered into a payment plan with the Applicant relative to the rent arrears then accrued but did not adhere to the agreed payments and defaulted almost immediately.
- xiii. That the tenancy deposit paid by the Respondents at the outset of the Tenancy Agreement remains with the deposit scheme.
- xiv. That payment of Universal Credit has ceased.
- xv. That the Second Respondent now has a full-time job within Boots' Opticians.
- xvi. That the First Respondent is a PR Consultant of many years experience.
- xvii. That the First Respondent is not presently in employment and has no offer of employment.

- xviii. That the First Respondent is in receipt of two pensions totalling £766.36 per month.
- xix. That the Property is bigger and therefore more expensive than the Respondents require.
- xx. That the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020.
- xxi. That, in the circumstances, it is reasonable that an eviction order be granted.

Reasons for Decision

The Tribunal carefully considered the written documentation submitted by both parties.

The Respondents submitted no documentation to evidence the Tenant Grant Fund Application or to vouch the First Respondent's discussions with the major hospitality provider relative to a potential opportunity to provide a PR consultancy service on a self-employed basis. Indeed, the First Respondent did not deny having discussed a similar opportunity last year which did not come to fruition. Details provided were vague and there could be no certainty that any employment was imminent.

The Respondents appeared to have recommenced payment of rent and made a proposal relative to the arrears only in response to the eviction application. Without the First Respondent having employment and based on the Respondent's current joint income it was very difficult to see how the ongoing rent and payments offered towards the arrears could possibly be maintained. Indeed, previously the Respondents had defaulted on a repayment plan agreed in July 2021.

The Respondents' financial difficulties began some months before the pandemic and did not arise directly as a result of the pandemic.

The First Respondent suggested to the Tribunal that the Property is small in size when in fact it is a 3 bedroomed property providing more space than the Respondents require by the First Respondent's own admission. The Property is outwith the Respondents' means.

The rent arrears are in excess of 8 months rent and the Tribunal could not be persuaded that these sums could be cleared by the Respondents within a reasonable period.

The Tribunal required to balance the interests of the parties and considered whether or not it would be reasonable to grant an eviction order and determined that it would be reasonable to grant an eviction order in the circumstances.

Decision

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

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.

Gillian Buchanan

19/04/2022

Legal Member/Chair

Date