



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

Chamber Ref: FTS/HPC/EV/22/1366

Re: Property at 19 Urquhart Green, Glenrothes, Fife, KY7 4SP (“the Property”)

Parties:

Mrs Avril Macgregor, Lizziewells Farm, Ladybank, Fife, KY15 7UZ (“the Applicant”)

Ms Samantha Digan, 19 Urquhart Green, Glenrothes, Fife, KY7 4SP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. By application dated 10 May 2022 the Applicant’s representative Miss Robyn Graham applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representative submitted a copy of the tenancy agreement, a rent statement, Notice to Leave, pre-action letters, email correspondence, Section 11 Notice and letter of authority in support of the application.
2. By Notice of Acceptance dated 27 May 2022 a legal member of the Tribunal with delegated authority accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 4 July 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 11 August 2022. The Applicant was represented by Miss Robyn Graham. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
5. The Tribunal established from Miss Graham that the Respondent had entered into a Private Residential Tenancy that had commenced on 18 December 2020 at a rent of £600.00 per calendar month. Miss Graham confirmed that the Respondent had been in credit with her rent from the commencement of the tenancy but had fallen into arrears in January 2022 and had remained in arrears since that date.
6. The Tribunal noted that the Respondent had been served with a Notice to Leave by email on 5 April 2022 advising that the earliest date the Applicant could make an application to the Tribunal for her eviction was 6 May 2022 and that the ground for eviction was ground 12 of Schedule 3 of the 2016 Act.
7. The Tribunal also noted that the Applicant's representative had sent pre-action letters to the Respondent by email on 5 and 18 April 2022 and 2 May 2022. She had also sent a Section 11 Notice to Fife Council by email on 10 May 2022.
8. The Tribunal asked Miss Graham if rent was still being paid through Universal Credit and was advised that further payments of £475.00 had been received on 10 June, July and August. Miss Graham also advised the Tribunal that the Respondent had paid £200.00 in July leaving a balance due of £766.92. Miss Graham pointed out that this would increase on 18 August when the next month's rent became due.
9. Miss Graham in response to a query from the Tribunal confirmed that the Respondent had made several offers to enter into a regular repayment plan with the Applicant but had not maintained these and the arrears continued to increase. She asked the Tribunal to grant the order.
10. The Tribunal sought some information from Miss Graham with regards to the Applicant's circumstances and her intentions for the property. Miss Graham explained that she was not certain as to what the Applicant intended to do with the property if the order was granted. She explained it was the Applicant's only let property and that she might decide to re-let it. She might sell it or leave it to her daughter. Miss Graham explained that the Applicant had recently spent £5000.00 installing new windows and doors at the property following complaints from the Respondent. She submitted that it was reasonable that the Applicant receive the full rent for the property given the expenditure incurred.
11. The Tribunal asked Miss Graham if she had any knowledge of the Respondent's circumstances and was advised that the Respondent lived in the property with her two sons who were aged about 12. She was not aware of the

children having any vulnerabilities. Miss Graham thought that the Respondent had been in employment as she was aware the Respondent's wages had been arrested at the beginning of the year for failing to pay Council Tax at her previous property.

Findings in Fact

12. The Respondent entered into a Private Residential tenancy that commenced on 18 December 2020 at a rent of £600.00 per calendar month.
13. The Applicant became the landlord in the tenancy on the death of her husband, John McGregor.
14. The Respondent was in credit in respect of her rent throughout the period from December 2020 to January 2022.
15. The Respondent fell into arrears of rent in January 2022 and has remained in arrears since then.
16. At the date of the CMD the Respondent owed rent amounting to £766.92.
17. The Respondent is in receipt of Universal Credit the housing element of which amounts to £475.00 and is paid directly to the Applicant on the 10th of each month.
18. Since January 2022 the Respondent has made several offers to the Applicant's representative to make regular monthly payments to clear the rent arrears but has not maintained these.
19. The Respondent has since January 2022 paid £200.00 in July 2022 towards her rent.
20. The Respondent has two children aged about 12 living with her at the property.

Reasons for Decision

21. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions at the CMD that the Respondent had entered into a Private Residential Tenancy Agreement that had commenced on 18 December 2020 at a rent of £600.00 per calendar month.
22. The Tribunal was also satisfied that the Respondent had fallen into arrears in January 2022 and had remained in arrears for three consecutive months. The Respondent had then been properly served with a valid Notice to Leave on 5 April 2022.
23. The Tribunal was also satisfied that the Respondent had been sent appropriate pre-action letters in advance of the application being made and that Fife Council

was given notice of the proceedings by way of a Section 11 Notice sent on 10 May 2022.

24. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 and the subsequent provisions contained in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 as the total amount due by the Respondent at the date of the CMD amounted to £766.92 being in excess of one month's rent, the Tribunal would have been obliged to grant an order for eviction. However, the Tribunal is now required to consider whether in all the circumstances it would be reasonable to grant the order.
25. It is unfortunate that the Respondent did not attend the CMD as that would have given the Tribunal an opportunity to find out more about her circumstances. Nevertheless, it did appear that the Respondent does not live alone in the property but has two reasonably young children living with her. In reaching its decision the Tribunal has taken account of the fact that almost 80% of the rent is being met each month by Universal Credit and although the Respondent has not engaged with the Tribunal in these proceedings, she has made a recent payment of £200.00 towards her rent. The arrears although increasing are not much above one month's rent as at the date of the CDM although will increase on 18 August but it should be borne in mind that the housing element of Universal Credit is usually paid in arrears whilst rent is normally paid in advance. Miss Graham sought to argue that the fact that the Applicant spent some £5000.00 on renovations to the property was a factor that the Tribunal should take into account in reaching its decision. However, the Tribunal was of the view that any obligations on the part of a landlord to maintain property to ensure it reached the repairing standard would not be a relevant factor in this instance. Miss Graham was concerned that if the order was not granted the Respondent would see that as an excuse not to pay her contribution towards the rent or to take any steps to reduce the arrears. The Tribunal understands Miss Graham's concerns in that regard.
26. Having carefully considered the information before it the Tribunal determined that there would be no merit in continuing the CMD either to a further CMD or hearing. The Tribunal was of the view that it had sufficient information before it to reach a decision without the need for a hearing. Taking account of both parties circumstances insofar as they were explained to it the Tribunal was satisfied that at this point in time given: (i) the relatively low level of rent arrears, (ii) the uncertainty of the Applicant's intentions for the property, (iii) the fact that the Respondent has two children living with her in the property, (iv) almost 80% of the rent is being paid each month and (v) the Respondent has made a recent payment of £200.00 it would not be reasonable to grant an order for eviction. The Respondent should not however be under any illusion that this in any way is giving her the right to remain in the property and not pay her rent. If the level of arrears continues to increase it is highly likely that the Applicant will make a further application and a subsequent Tribunal may well take a different view in such an instance.

Decision

27. The Tribunal refuses the application.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**11 August 2022
Date**