



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/19/4044

Re: Property at 8 Brent Gardens, Glasgow, G46 8GB (“the Property”)

Parties:

Mrs Kausar Saleem, 8 Brent Avenue, Glasgow, G46 8JU (“the Applicant”)

Ms Cheryl McLaughlin, 8 Brent Gardens, Glasgow, G46 8GB (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gordon Laurie (Ordinary 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 under section 18(1) of the Act and Rule 65 of the Procedure Rules for eviction and recovery of possession on the basis of grounds 8, 11, 12 and 13 of Schedule 5 to the Act.

The following documents were considered by the Tribunal:

1. Application received 20 December 2019;
2. AT5 dated 31 January 2014;
3. Short Assured Tenancy Agreement (**SAT**) dated 31 January 2014;
4. AT6 dated 27 September 2019 setting out grounds 8, 11, 12 and 13;
5. Notice to Quit dated 27 September 2019;
6. Certificate of Service by Sheriff Officers of AT6 and Notice to Quit dated 27 September 2019;
7. Section 11 Notice;

8. Schedule of Rent Arrears at 6 September 2019;
9. CMD Note dated 6 March 2020;
10. Direction dated 6 March 2020;
11. Letter from Tribunal service to Respondent dated 23 July 2020 notifying the date of the CMD;
12. Royal Mail Track and Trace confirming the Notification was signed for and delivered to Respondent on 24 July 2020;
13. Written Representations from Applicant enclosing:
 - a. Statement of Applicant;
 - b. Letter from AQA dated 11 May 2020;
 - c. Letter from Martin and Co dated 4 May 2020;
 - d. Email from Kevin McCarron dated 10 September 2019;
 - e. AT5 dated 31 January 2014;
 - f. Decision of Tribunal in FTS/HPC/EV/19/2081;
 - g. Letter from Shields Medical Practice dated 10 June 2020.
14. Hearing Note dated 18 August 2020;
15. Written Representations from Applicant dated 1 September 2020 enclosing:
 - a. Second Statement of Applicant.
16. Written Representations from Respondent enclosing:
 - a. Witness Statement from Respondent and Michael McLaughlin;
 - b. Charge for payment dated 8 January 2019;
 - c. Correspondence to Respondent;
 - d. AQA Statements of rental payments;
 - e. Statement of Ms Taqdis Asim;
 - f. Email of 17 September 2018 from Michael McLaughlin to AQA;
 - g. Glasgow City Council correspondence dated 7 September 2018 and 30 January 2019.
17. Written Representations from Applicant dated 30 October 2020 enclosing:
 - a. Third Statement of Applicant;
 - b. Emails from AQA.

Hearing

The case called for a Hearing by conference call on 2 November 2020. The Applicant participated and was represented by her solicitor. She also had a friend with her who acted as a translator. The Respondent participated and was not represented.

The Tribunal identified who was participating in the Hearing, witnesses and productions. The Tribunal went through the procedure to be adopted by the Tribunal in the Hearing and ensured this was understood by the Parties.

The Tribunal also ensured the Parties knew the issues to be addressed were as follows:

1. Whether the tenancy was varied in a meeting between the Parties in June 2018 so that Mr Michael McLaughlin became the sole tenant; and
2. What rent (if any) had been paid subsequent to September 2018.

The Tribunal then heard from the following witnesses:

For the Applicant

1. The Applicant; and
2. Mr Javaid Haq.

For the Respondent

1. The Respondent;
2. Mr Michael McLaughlin; and
3. Ms Taqdis Asim.

Summary of Relevant Evidence

The Applicant's evidence was that she never agreed to vary the tenancy to have Michael McLaughlin as the sole tenant. There had been meetings with the Respondent, including a meeting in June 2018 but she did not accept that the Respondent, Mr McLaughlin, Mr Arshad and Ms Asim had all been present.

The Applicant accepted that she had received a payment of £500 from AQA in September 2018 following their receipt of a payment from Glasgow City Council in respect of Housing Benefit under the name of Michael McLaughlin. No further payments had been received in respect of rent since then.

The Applicant had agreed to provide the Respondent with a new lease. This represented a "fresh start" between the parties. A new lease was never entered into as the Respondent had not turned up for meetings with the Applicant's letting agent Mr Arshad. The Respondent had also failed to provide the appropriate information for a new lease to be prepared through Mr Haq in 2019.

Mr Haq gave evidence that he had tried to resolve matters between the Parties. He had tried to have a new lease prepared and entered into. The Respondent had failed to provide the paperwork necessary to do so and to co-operate. He did not recall who was to be the final tenant as this was a matter to be discussed and agreed.

The Respondent asserted that her husband, Michael McLaughlin, was the sole tenant by agreement reached verbally with the Applicant at the meeting in the Property in June 2018. Mr Arshad and Ms Asim were also present at that meeting.

A new lease was to be prepared to that effect.

The reason for this agreement was that the Respondent and her husband had split-up and she was moving to Inverness for work. Mr McLaughlin would remain in the Property as the sole tenant and to care for the Respondent's autistic son. He would apply for Housing Benefit to facilitate payment of the rent. He could only apply for Housing Benefit once his name was on the lease.

A payment of £1,048.77 had been made by Housing Benefit in September 2018 in the name of Michael McLaughlin.

The Respondent asserted that the rent had been paid in cash through to the end of December 2018. This had been done by £500 of Housing Benefit being paid in cash by Mr McLaughlin and her topping the rent up to £800 (also in cash). The money had been put in an envelope and deposited through the Applicant's door. No receipts had been obtained. When asked why she had continued to pay a proportion of the rent her response was that she still had responsibilities towards her son and to ensure that he had a roof over his head.

No rent had been paid since then due to the Applicant's failure to prepare the new lease.

The Respondent stated that Mr Arshard had contacted her and Mr McLaughlin to arrange for her to sign paperwork to be released from the lease and separately for Mr Mclaughlin to come in and arrange to sign a new lease. The two meetings were to happen separately on two consecutive days.

The Respondent had been suspicious of this arrangement and did not wish to attend without Mr McLaughlin. She had not attended.

The Respondent accepted that she and Mr Mclaughlin had attended a meeting with Mr Haq in 2019 and had brought bank statements to establish what had been paid in respect of rent. She spoke of an agreement to pay half of the arrears which had arisen since June 2018 if the Applicant agreed to write off the other half. She stated that this agreement was subsequently changed by the Applicant and she had decided that she would deal with the preparation of the new lease herself.

A new lease was not in the end of the day prepared by Mr Haq or the Applicant.

Ms Asim confirmed that she had attended a meeting at the Property in June 2018. Present at that meeting were the Parties, Mr McLaughlin, Ms Asim and Mr Ashard. The agreement reached was that Mr Mclaughlin would be put on the lease. When pressed she confirmed this was her understanding, that she did not recall words to the effect that the Respondent was being taken off the lease, or that it would be a joint lease. She understood that a new lease would be entered into.

Mr McLaughlin's evidence was to the effect that he had attended the meeting at the Property on June 2018. He was present along with the Parties, Ms Asim and Mr Arshard. It was agreed with effect from that meeting that he would be the sole tenant. A new lease was to be prepared to that effect. He was in no doubt about this.

He confirmed that Mr Arshard had wanted the Respondent to attend a meeting to be released from the lease and on a separate date for him to attend and sign a new lease.

The meeting never took place due to suspicions that the Respondent and he had about the meeting.

He confirmed that the Respondent had attended a meeting with Mr Haq, provided bank statements and other documents but that no new lease had been produced. The Applicant had then said that she was going to deal with the new lease herself.

No new lease was ever provided and as such he couldn't obtain Housing Benefit or subsequently Universal Credit. No rent had been paid since December 2018.

Decision and Reasons

Having considered the oral and documentary evidence, the Tribunal, in so far as was material, made the following findings in fact:

1. The Parties entered into a Short-Assured Tenancy Agreement (**SAT**) dated 31 January 2014;
2. The rent was initially £725 and subsequently increased to £800 in 2016;
3. At a meeting between the Parties in June 2018 the Parties agreed that a new lease would be entered into with Mr McLaughlin as the sole tenant;
4. The Applicant's letting agent, Mr Arshad, contacted the Respondent and Mr McLaughlin to arrange for the Respondent to be removed from the lease and for Mr McLaughlin to enter into a new lease;
5. The Respondent chose not to attend the meeting to be released from the lease and Mr McLaughlin chose not to attend the meeting to enter into a new lease;
6. No new lease was ever entered into between the Parties;
7. The existing lease (SAT) would have continued until such time as it was formally ended and replaced with a new lease;
8. The Respondent remained the sole tenant under the existing SAT;
9. No rent was paid after December 2018;
10. Notice to Quit and AT6 dated 27 September 2019 were served on the Respondent by Sheriff Officers on that date;
11. Section 11 Notice had been served on the local authority;
12. As at the date of service of the Notice to Quit and AT6 there was in excess of 3 months' rent due (at least 9 months' rent was due);
13. As at the date of the Hearing there was in excess of 3 months' rent due (at least 22 months' rent was due);
14. The rental arrears were not due to any delay or failure to make payment of a relevant benefit.

The Tribunal did not accept the Applicant's evidence that she had not agreed for Mr McLaughlin to be put on the lease at the meeting on June 2018.

The Tribunal preferred and accepted the Respondent's evidence, Mr McLaughlin's evidence and Ms Asim's evidence to the effect that it had been agreed that a new lease would be entered into with Mr McLaughlin.

The Tribunal did not accept the Respondent's evidence (or that of her witnesses) to the effect that Mr McLaughlin was agreed to be the sole tenant with immediate effect.

By the Respondent's own admission (corroborated by Mr McLaughlin) the Applicant's Letting Agent, Mr Arshad, had contacted her to arrange for her to attend to finalise the termination of the existing lease and then for Mr McLaughlin to attend and enter into a new lease. This never happened as the Respondent was suspicious and decided not to attend the meeting.

Ms Asim's evidence simply confirmed an agreement to a new lease with Mr McLaughlin being put on it.

It was agreed between the Parties that a new lease was to be entered into with Mr McLaughlin. It was also agreed that was never done.

Whilst there were slight variations in the witness's recollection it appeared to the Tribunal that version of events was the most credible and reliable in the circumstances.

Given that the new lease had never been entered into and the Respondent had never been removed from the existing lease it was the Tribunal's view and finding that the Respondent remained the tenant under the terms of the existing lease.

This was further supported by the Respondent's evidence that she had offered to pay half of the arrears if the Applicant wrote off the other half by the time of her meeting in 20189 with Mr Haq.

The Respondent had not applied for a relevant benefit. Accordingly, the rental arrears were not due to any delay or failure to pay a relevant benefit.

The Application was made based on grounds 8, 11, 12 and 13 of Schedule 5 to the Act.

Ground 8 provides:

Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.

The Tribunal considered the relevant tests for Ground 8 to be satisfied. In particular whether at the date of service of the AT6 and at the date of the CMD at least 3 months' rent was outstanding. The Tribunal determined that the tests were satisfied.

It then fell to the Tribunal to determine whether the arrears were in any part due to the failure or delay in payment of a relevant benefit. The Tribunal determined that it was not.

Ground 8 is a mandatory Ground in which the Tribunal has no discretion. The Tribunal was accordingly satisfied that the terms of Ground 8 were satisfied and that the order should be granted as sought.

The Tribunal did not require to make any findings with regard to the remaining Grounds given its determination with regard to Ground 8.

In granting the order the Tribunal was satisfied that the decision was in accordance with the overriding objective.

Outcome

- **Order for eviction and recovery of possession granted**

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

2 November 2020

Legal Member/Chair

Date