



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 (“The Act”).

Chamber Ref: FTS/HPC/EV/21/2326

Re: Property at 24 Rowan Road, Abronhill, Cumbernauld, G67 3BZ (“the Property”)

Parties:

Miss Hazel Cox, 27 Tmmons Terrace, Chapelhall, Airdrie, ML6 8UT (“the Applicant”)

Miss Fiona Noble, Mr Ronald Conroy, 24 Rowan Road, Abronhill, Cumbernauld, G67 3BU; 24 Row an Road, Abronhill, Cumbernauld, G67 3BZ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order.

Background

The Applicant seeks an Eviction Order on the basis of Ground 12 of Schedule 3 of the Act. A Case Management Discussion had taken place on 1 March 2022 which had identified several problems with the Application. The Applicant subsequently engaged legal representation who had corresponded with the Tribunal in an attempt

to address the concerns raised and set out in the Case Management Notes subsequently produced.

The Case Management Discussion

The Application called for a subsequent Case Management Discussion (CMD) by conference call at 10 am on 23 May 2022. The Applicant was represented by Ms Siobhan Brown of Complete Clarity Solicitors. The Applicant's partner, Mr Maxwell was present simply to observe proceedings. The First Respondent, Ms Fiona Noble was present on the call.

At the outset Ms Noble confirmed that the Respondents did not oppose the granting of an Eviction Order. Ms Noble even went as far as to suggest that she was positively hoping for an Eviction Order to be granted.

Ms Noble confirmed that the rent arrears relied upon were indeed lawfully due and that she accepted that the Respondents now owed more than £10,000.00 of rent. Ms Noble explained that there was no real prospect of these sums being repaid and it was only likely that the sums due would continue to increase. Ms Noble also explained that her partner, the Second Respondent knew all about the Application and was in agreement with Ms Noble.

Ms Noble explained that she had been in contact with Citizens Advice and North Lanarkshire Council and was *"just needing an Eviction Order to be issued"* so that the Council could assist her and her partner with an application for homeless accommodation.

The Tribunal balanced this alongside the many procedural issues identified within the substance of the Application.

The Applicant had produced text messages which did appear to address The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The text messages appeared to convey the appropriate information to the First Respondent as required by the aforesaid Regulations. The Tribunal noted that these texts were purely between the Applicant and the First Respondent, but the Tribunal noted that the First Respondent confirmed that she discussed everything with her partner.

The Notice to Leave that was relied upon was said to have been pushed through the Respondents' letterbox on 10 March 2021. It provided that the Respondents should vacate the Property no later than 10 September 2021 by which time an Application would be raised with the Tribunal. The timings of the notice therefore did not take

account of the 48 hours to be allowed for the Notice to be presumed to be received by the Respondents as per s62 (5) of the Act.

The Applicant had also not served a separate Notice to Leave on each Respondent but rather served one on both. The Applicant had attempted to complete the necessary notice under s11 of the Homelessness (Etc.) (Scotland) Act 2003 although one part of the form appeared inexplicably incomplete.

The Applicant also then appears to have made a subsequent attempt to enter into a new tenancy with the Respondents and sent them a new tenancy signed by her on 7 September 2021. This document appears however not to have ever actually been signed by the Respondents. As noted at the CMD, the whole Application appeared riddled with mistakes and there was not one document that was not found wanting for accuracy and did not contain incorrect dates or missing content.

There was no dispute though that the substance of the Ground of Eviction was made out. At the time of the service of the Notice to Leave and as at today's date, the Respondents were in arrears of rent lawfully due to the Applicant of a sum in excess of one month's worth of rent and had been for a period of in excess of three months.

The Tribunal adjourned to consider matters.

Having done so, the Tribunal made the following findings in fact:

Findings in fact

- I. *The Applicant and the Respondents entered into a tenancy that first commenced on 5 October 2018 and so should be considered to be a Private Residential Tenancy despite the document itself purporting to be a short assured tenancy;*
- II. *The contractual monthly rent was £450.00;*
- III. *The Respondent fell into rent arrears and by 10 March 2021 owed the Applicant a sum in excess of one month's worth of rent and had done so for a period of in excess of three months;*
- IV. *That remains the position as at today;*
- V. *There are many inaccuracies and flaws in the documentation as noted above;*

VI. *The Respondents however are actively wishing that an Eviction Order is made.*

Reasons for Decision

Having made the above findings in fact, the Tribunal decided to use the powers open to the Tribunal by virtue of s 73 regarding “*minor errors*” and s 52(4) to dispense with the requirement for service of a Notice to Leave on the Second Respondent.

Had the Respondents opposed the Application or even been neutral then the Tribunal would not have engaged these sections and would have refused the Application. The Tribunal also considered that it was reasonable to grant the Application on the basis that the Respondents themselves considered it advantageous to them that such an order be 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.

A McLaughlin

Legal Member/Chair

23 May 2022
Date