

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/21/2383

Re: Property at 11 Cant Crescent, St Andrews, Fife, KY16 8NF (“the Property”)

Parties:

Mr Derek Gomez, 14 Quadrant Road, Glasgow, G43 2QJ (“the Applicant”)

Ms Aisha Al Sulaiti, 11 Cant Crescent, St Andrews, Fife, KY16 8NF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for repossession of the Property.

1. An application was received by the Housing and Property Chamber signed 1st October 2021. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on to ground 4 of the Private Housing (Tenancies) Act 2016, namely that the Applicant wished to live in the Property.
2. On 3rd December 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 14th January 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 24th December 2021.
3. A CMD was held on 14th January 2022 at 10am by teleconferencing. The Applicant was represented by Ms Alice Heggerty, trainee solicitor, Rollos LLP.

The Applicant was not present. The Respondent was represented by Mr Josef Strand, solicitor, Watermans Legal. The Respondent was not present. Ms Heggerty noted that there has been antisocial behaviour and that the dog warden had visited the Property on at least 2 occasions regarding the Respondent's dogs. There has been no rent paid since June 2021. Ms Heggerty raised these points as issues of reasonableness. Ms Heggerty informed the Tribunal that the Applicant has 3 properties in Glasgow which he lets out and are 2 and 3 bedroom properties. He has 5 properties in St Andrews which are 2 bedroom student properties plus this property. The Applicant only instructs a letting agent for this property and wishes to be close for dealing with the day to day management of the other properties in St Andrews. The Applicant has 3 adult children. One, who is 22, lives in London but is planning to return and will live with the Applicant. The Applicant's son is in the armed forces. When he is on leave he will visit for 1-2 months at a time. Ms Heggerty noted that the Applicant contacted his lender when the Notice to Leave was served. Mr Strand told the Tribunal that the family consists of the Applicant, her husband and their 11 children. The two eldest children are in Qatar. One is at university and the other is undertaking national service. Both return home during the holidays. The nine other children are at school in St Andrews. The Applicant's husband works in Qatar part of the time and returns to St Andrews the rest of the time. The Respondent has struggled to find another suitable property to accommodate the whole family especially when the rental market is under so much demand. The Tribunal was satisfied that an agreement was not able to be reached with the parties. However, there was insufficient information to reach a decision. The Tribunal continued the CMD to a full hearing to allow further evidence to be provided.

The Hearing

4. A hearing was held on 7th March 2022 at 10am by teleconferencing. The Applicant was represented by Ms Alice Heggerty, trainee solicitor, Rollos LLP. The Applicant was present. The Respondent was represented by Mr Josef Strand, solicitor, Watermans Legal. The Respondent was present.
5. Mr Strand indicated that there could be some scope for discussion between parties. The Tribunal allowed an adjournment for discussions. Parties asked for further time. At 11.30am Mr Strand noted that an agreement could not be reached. The hearing proceeded.
6. Ms Haggerty submitted that the Applicant continued to seek an order for eviction. The Applicant intends to move into the Property with his wife. His adult daughter is to return from London to live in the Property too. She has a job offer in St Andrews that she can take up once the Property is able to be occupied by them. None of his other properties in St Andrews would be suitable. His current home is under offer with an entry date of mid May. The Applicant's son will manage his remaining Glasgow properties' as his son lives in Glasgow. The rent continues not to be paid. The arrears currently stand at £33000, the ongoing rent is not being paid. Ms Haggerty submitted that the Respondent received notice of the Applicant's intention when the Notice to Leave was served in June

2021. The Applicant changed his mortgage to a residential mortgage in September 2021.

7. Mr Stand submitted that the granting of an order was opposed. He considered that it was unreasonable to evict. The Respondent has been in the UK since 2017. She is currently balancing her PhD studies with looking after her 7 children. She has integrated into the community. She has been searching for a property but has been unable to find a suitable one. The level of rent arrears is disputed. The Respondent considers that she was being charged too much in rent. The Property had previously been rented out for just under £2500 per month. She was initially paying £3300 and currently being charged £3000. The Respondent accepts that she is due the rent up to the amount previously charged to other tenants but not beyond that. The money up to £2495 per month is in a bank account and can be transferred over.
8. The Respondent told the Tribunal that she lived in the Property with 8 of her children who are aged 3, 6, 7, 9, 10, 11, 15 and 17. Her 3 year old attends private nursery. Her 17 year old attends an online course. The other children attend a private school in St Andrews. Her husband is in Qatar working. She also has a nanny living with her. The Applicant has 2 dogs and 2 cats. The Respondent will take her children to school in the morning and pick them up after school. The nanny does not drive. The Respondent is undertaking a PhD course in St Andrews University. Since Covid this has been online. She believes the University will return to face to face again by October 2022. She has asked her university supervisor to extend her PhD to December 2023 as she was due to finish in October 2022 but due to Covid would like to extend it. She is waiting on a decision. The Respondent has an older son who may attend university in St Andrews in September, however, he has not decided on where he will study as he has offers from other universities. Her 11 year old and 15 year old children have exams in May 2022. The Respondent would not consider it an option for her children to go on the bus service provided by their school. She would still need to take them to the bus stop. When she returns to university the school will be across from her department. The Respondent has limited her search area for a new property to 5 -7 miles from St Andrews. She often has to return home for items that her children have forgotten or deal with them when one is ill. She has heard that the Tay Road Bridge will close and does not want the additional time on her journey should it close. She is not aware of how often it does close due to bad weather. She disputes that the rent arrears are all due. She maintains that the amount that she had agreed to in the lease was too high. She noted that she did not have any legal knowledge when signing the lease or in terms of paying the minimum that that she feels is due. The Respondent is looking regularly for an appropriate property. She has viewed some but not found them to be suitable.
9. The Applicant said that initially the Respondent was to occupy the Property with her nine children, two nannies, two dogs and two cats. He increased the rent to cover the amount of wear and tear from such a large household occupying the Property. He had only ever let it out to a family of up to 6 before. He has offered the Respondent that she can stay in the Property until the end of the school year in June on the basis that the full amount of the arrears were paid over.

This has been refused by the Respondent. The Applicant's daughter is to move to St Andrews from London once the Property is able to be occupied. He has a son in the military who returns to live with him for 6 months at a time when on leave.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 23rd March 2020. A Notice to Leave was served on 14th June 2021 based on ground 4 that the Applicant intends to live in the Property.
11. The Applicant has marketed his own property in Glasgow. It is now under offer. He intends to move to St Andrews. The Property is of a similar size to the one being sold in Glasgow.
12. The Respondent has rent arrears of £33000.
13. The Tribunal considered the evidence before it. It was agreed between parties that the key issue was that of reasonableness. The Tribunal considered it reasonable for the Applicant to wish to occupy this property as it was a similar size to his own. He has suitable reasons to be in St Andrews and that it was clear that it was his intention to live in that property. The Tribunal then considered if it was reasonable for the Respondent to be evicted from the Property. The Respondent had raised that she was struggling to find alternative accommodation suitable for herself, her 8 children, her nanny and pets and that any property be able to accommodate her husband and other children when they were in the country. The Respondent made it clear that she was only willing to look at a maximum of a 7 mile radius for a search for an alternative property. The Tribunal considered this to be a very small search area to find a large property. The Tribunal considered this distance to be very limiting in terms of her search and that it would be reasonable for her to look further. She did not wish to go further in case she had to return home to get items for her children. The Tribunal did not consider this to be reasonable given that she has a nanny to help organise the children for school and that it would not be on a daily basis. This was an issue of organisation rather than location. There is the option of a school bus for the children. The Respondent has not yet returned to face to face learning and is still working from home. It is not reasonable when the Respondent has a car and can drive to keep to such a limited search area. The Respondent had noted that her eldest son had friends in Dundee when he was at school in St Andrews as they lived in Dundee but when to school in St Andrews. The Tribunal accepted that this was not an eviction case based on rent arrears. However, the rent arrears did speak to the behaviour of the Respondent. The arrears are at a very significant level. Whilst there may be a dispute regarding the amount the Respondent accepts that she is due the Applicant, there is a minimum amount of approximately £2500 per month that she accepts is due to the Applicant yet she has failed to pay any rent since June 2021. No bank statements were provided to corroborate that the funds were waiting to be released to the Applicant. The parties entered into a legal contract, the lease, in which they accepted the terms. The Respondent stated

that she did not have legal advice upon signing the lease. However, she has employed the services of Mr Strand since at least the last CMD and has not paid over any of the outstanding amount due. This dispute over the amount of the rent is not for the Tribunal. It does show that there are ongoing arrears. The Tribunal noted that there were £33000 rent arrears and the Respondent had deliberately not paid the rent to the Applicant. On balance the Tribunal considered it reasonable to grant an order for eviction. While the Tribunal noted that her sons have exams in May it considered that the Respondent has been aware that she would require to leave the Property since June 2021 when the Notice to Leave was served. The Tribunal considered that it was reasonable to grant the Order.

Decision

14. The Tribunal found that ground 4 has been established and the granted an order in favour of the Applicant.

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.

7th March 2022

Legal Member/Chair

Date