



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/22/0695

Re: Property at Flat 1/1, 12 Ashvale Crescent, Glasgow, G21 1NE (“the Property”)

Parties:

Mr Kenny Febers, Mrs Ann Febers, c/o Nixon Estate Agents, 32-34 Kirkintilloch Road, Bishopbriggs, G64 2AL (“the Applicant”)

Mr Buba Jaiteh, Flat 1/1, 12 Ashvale Crescent, Glasgow, G21 1NE (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would refuse the order for eviction.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondents for the Property.
2. The application contained:-
 - a. a copy of the tenancy agreement,
 - b. a copy of the notice to leave with evidence of service
 - c. a copy of the section 11 Notice with evidence of service
 - d. a copy of the rent statement
 - e. copies of correspondence between the parties regarding the rent arrears

3. A case management discussion took place on 29 June 2022. Reference is made to the case management discussion note of that date. A hearing was fixed to take place on 30 September 2022 and was adjourned that day, due to the papers not being provided to the parties and as the hearing was to take place in person. Reference is made to the hearing note.
4. The respondent had submitted two emails in support of his position dated 21 June and 20 July both 2022. The applicant's agent provided written papers in compliance with the direction of 16 September 2022. At the hearing the applicant's agent submitted a further updated rent statement; bank transaction statements showing the payments the respondent had made by bank transfer.
5. The application proceeded to an in-person hearing on 6 January 2023. The Applicants' representatives, Heather McBride and Ashley Nixon from R Nixon Estate and Letting Agents appeared on behalf of the Applicant. The Respondent attended the hearing. Mr Nixon also appeared as a witness for the Applicants.
6. A Hearing note was issued on 12 January 2023. Reference is made to the full terms of that Note. The decision of the tribunal on that date was that it would continue determination of this matter for a period of three months to monitor payment of rent and arrears (arrears to be repaid at a rate of at least £100 per month). A further hearing can take place by telephone.
7. The further hearing took place on 21 April 2023. Prior to the hearing the applicants' agent submitted an up to date rent statement.
8. In attendance at the further hearing was Miss Nixon agent for the applicants and the respondent.

The Hearing

9. Ms Nixon advised that the respondent had been paying his rent and £100 towards his arrears since 13 February 2023. She advised that he had made a further payment to rent and arrears on 16 April 2023. As at today's date he had paid £300 to the arrears, and the rent arrears were now £1,950.00.
10. She advised that she had received an instruction this week from the applicants to serve notice to leave on three tenants for three separate properties, including the respondent's, on the ground that the landlord intends to sell the property.
11. The respondent confirmed that he had been making payments to rent and arrears. He advised that he wishes to stay in the property for the same reasons that he gave the tribunal at the hearing in January 2023.

Findings in Fact

12. In addition to the findings in fact that the tribunal made on 12 January 2023, the tribunal makes the following further finding in fact:-
13. Since 13 February the respondent has made payments to his rent and also paid £100 per month towards his arrears.
14. The rent arrears have reduced to £1950.00 as at 21 April 2023.

Reasons for Decision

15. The tribunal would refer to the full terms of its hearing note of 12 January 2023 which sets out the reasons why it continued consideration the application at that time. The tribunal finds that those reasons still apply to consideration of this application as at 21 April 2023. The tribunal relies on those reasons in respect of this decision.
16. In addition, the tribunal also has regard to the fact that the respondent has continued to make payments to his rent, and has commenced making payments towards his arrears. He continues to wish to stay in the property for the reasons he has previously provided.
17. We note that the applicants have now instructed the agent to serve a new Notice to Leave based on the ground that that they intend to sell the property. For the purposes of this application, we note this intention to raise further proceedings against the respondent on a new ground. We were aware of the applicants indicating that they may sell the property at the first hearing.
18. Having regard to the full terms of the hearing note of 12 January 2023 and the further information before the tribunal today, which shows that the rent and arrears are being repaid, and balancing the reasons why the respondent wishes to remain in the property against the applicants' reasons why it would be reasonable to grant the order, as at 21 April 2023 the tribunal refuses to grant the order for eviction.

Decision

19. The Tribunal determined that it would refuse the order for eviction.

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.

21 April 2023

Legal Member/Chair

Date