



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/22/0739

Re: Property at 23 Doon Place, Kirkintilloch, Glasgow, G66 2RB (“the Property”)

Parties:

Mr Kenneth Ronald, 2 Melford Avenue, Kirkintilloch, Glasgow, G66 1EB (“the Applicant”)

Miss Fiona Fullerton, Mr Steven Downey, 23 Doon Place, Kirkintilloch, Glasgow, G66 2RB (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application for a Eviction Order should be refused on the grounds that it is not reasonable to grant the Order sought.

Background

1. By application dated 10 March 2022 the Applicant applied for an order for eviction and possession of the Property on the basis of Ground 12 of Schedule 3 to the 2016 Act.
2. The papers before the tribunal comprised; -
 - Private Residential Tenancy Agreement (PRT) with a start date of 27 April 2019
 - Notices to Leave dated 1 June 2021
 - Proof of service dated 3 June 2021 of the Notices to Leave by e-mail (as specified in the PRT)

- Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Dunbartonshire Council
 - Rent Statement covering the period 1 April 2019 to 10 March 2022 showing arrears of rent to be £2443.65 at that date.
 - Pre-application Protocol Letters sent by e-mail to the Respondent dated 16 November 2021
3. By decision dated 26 May 2022, a Convenor of the HPC having delegated power for the purpose referred the application to the tribunal. A letter of intimation dated 23 June 2022 and Notice of the Case Management Discussion (CMD) to be held on 4 August 2022 at 10am by teleconference call together with the case papers was served on the Respondent by Sheriff Officers on 23 June 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificates of Citation of that date.
 4. No written representations were received from the Respondent in advance of the CMD.

The Case Management Discussion 4 August 2022 10am

5. The Case Management Discussion (CMD) took place by teleconference. The Applicant was represented by Ms Sharon Cooke of Coda Estates Limited. Ms Katrina O'Neill from Coda Estates Limited was also present. Miss Fiona Fullerton was present and stated that she was representing the joint position from herself and Mr Steven Downey.
6. The tribunal explained the purpose of a CMD in terms of Rule 17 of the Rules.

Position of the Applicant

7. Ms Cooke stated that she was seeking an Order for Recovery based upon the arrears position as detailed in the rent statement.

Position of the Respondent

8. Ms Fullerton said that arrears have not continued to accumulate. She said that the arrears accrued during March – July 2020 during the period when the country was in lockdown. She said that other than during that period, she had paid the rent in full every month. Even when the arrears were accruing she said that she paid a half share of the rent due. The problem had been due to Mr Downey who could not afford to pay the other half of the rent due as he is a self employed man and was unable to work. This is where the rent arrears had arisen.
9. Ms Fullerton said that in the past she had discussions with the Applicant and had enquired whether he would accept a payment of £50 per month

towards the arrears in addition to the rent for the Property. It would have taken approximately 18 months for her to have paid the arrears on this basis. Ms O'Neill had however told her that the Applicant was not happy with this arrangement. She had also applied to the various organisations offering assistance during the Covid pandemic and had been denied any sum of money from them.

10. She had entered into a debt arrangement scheme in November 2021 which included the rent arrears. She pays into this scheme every month timeously. It will take approximately 5 years for her to pay the arrears back under this scheme.
11. She stated that if she has more money however that she will pay this towards the arrears in addition.
12. Ms Fullerton went on to state that her biggest problem currently is that she has a 13 year old son who has Autism and learning support needs. She has made an application for alternative social housing but said that currently the applications are taking approximately 2-3 years to be processed in order to receive a tenancy in a "decent" area. The ongoing proceedings are adding stress to herself and the household. She said that she is carrying the burden of attempting to resolve matters. She would like if possible to be housed in an area close to her son's school and this is her main issue. He is about to go into his second year at High School in a few weeks time. To move away from the area and the Property would be a cause of massive anxiety for her son and have a detrimental effect on his well-being.
13. She has made sure the rent has been paid in full for many months. She went on to say that she has rented property for 20 years. She has been a good tenant and she has good relations with neighbours. She has tried her utmost to please the Applicant. Her wish is to remain in the Property and she can move when she finds somewhere else suitable for her needs. She said that she did not feel that was unfair.
14. She said that when she initially moved into the Property with Mr Downey this was supposed to be a relatively short-term position. He does continue to pay his share of the rent. She has now obtained a new job providing learning support in schools which is a permanent full-time contract. This will alleviate some of the pressure on her as she had been made redundant and had then a series of temporary contracts. She is unsure what her take-home pay will be but is confident she will have an improved financial position. This may make it easier for her to secure alternative housing within the social housing or private rented sectors.

15. Ms Cooke said that she largely agreed with what Ms Fullerton said and she is sympathetic to her position. She said that she wanted to ensure that the Applicant kept a roof over head. She said that in conversations with Ms Fullerton that she had said that her living circumstances were not ideal. She had attempted along with Ms Fullerton to try and source alternative accommodation for her and her son but they had not yet managed to find anything suitable. She said that the best outcome for Ms Fullerton would be to be allocated social housing but due to her circumstances she is at the mercy of East Dunbartonshire Council. She said that the goal was to source for Ms Fullerton her own independent and affordable property.
16. Currently the rent is being managed, and in addition to the rent, £15.32 per fortnight is being paid towards the arrears by the debt arrangement scheme. She said that currently the rent being paid is significantly less than the market value and that it is possible that the Applicant will increase the rent. Currently the rent arrears due are £2351.73. She said that during the pandemic for example in November 2020 the rent due was £2127.50. The arrears are slightly higher but relative to where we are today the figure is not greatly shifting. On 23 February 2022 the first payment of £15.32 was paid from the debt arrangement scheme. Since then a further 6 payments have been made at the rate of £15.32 per fortnight.
17. The Applicant's view is that a significant amount of rent has been due for a significant period of time and the fact that rent is being paid under the market value for the Property is putting additional pressure on him. He is aware of the Respondent's living arrangements and her desire to be rehoused locally by the local authority.
18. Ms Cooke said that if the Tribunal were to grant the Order that this may provide some leverage for the Respondent with the local authority. She said that she shared the Respondent's concerns for Ms Fullerton's son's position.
19. Neither party felt that anything more could be explored at a full Hearing as there were no disagreements over any of the material facts and were content that the Tribunal determine matters today at the CMD.

Findings in Fact

20. The Applicant is the Landlord of the Property, and the Respondent is the tenant in terms of a PRT entered into between the parties with a start date of 27 April 2019
21. The rent stipulated in the PRT was £695 per month.
22. The Respondent has fallen into arrears of rent.
23. At the time that the Notices to Leave were served the rent arrears stood at £2475.

24. As at the date of the application the rent arrears amounted to £2443.65.
25. As at the date of the CMD on 4 August 2022 the rent arrears outstanding have reduced but remain over three months, namely £2351.73
26. The Respondent is in rent arrears over three consecutive months
27. The fact that there are arrears of rent is placing some pressure on the Applicant.
28. Notices to Leave were dated 1 June 2021 and were sent out by e-mail on 3 June 2021 to the Respondent
29. The Notices intimated that the Landlord was seeking recovery and possession of the Property on the basis that there were rent arrears over 3 months consecutively.
30. The Notice period specified in the Notices expired on 3 December 2021.
31. The application was lodged with the tribunal on 15 March 2022.
32. A Notice in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 has been intimated to the local authority.
33. The Respondent fell into arrears of rent during the pandemic
34. The current rent is being paid in full
35. The Respondent has entered into a Debt Arrangement Scheme which is paying £15.32 towards the arrears of rent on a fortnightly basis.
36. The Respondent has attempted to source alternative suitable housing
37. The Respondent wishes to reside at the Property
38. The Respondent has a 13 year old son with Autism and learning support needs
39. The Respondent's son attends a local school
40. It would cause distress and anxiety to the Respondent's son if the Order were granted and alternative housing was needed especially if this could not be sourced outwith the local area and near his school
41. The Applicant's Representative sympathises with the Respondent's position
42. The Respondent Ms Fullerton has obtained a new job on a permanent contract
43. The Respondent will pay additional sums to the outstanding arrears should her financial circumstances allow this
44. It is unreasonable to grant the order.

Reasons for Decision

45. In considering the reasonableness of the Order being granted the tribunal took account of the position of both parties and all the relevant circumstances as at the date of the CMD. The Tribunal weighs up the pros and cons of the order being granted and determines that having done so it is not reasonable for the Respondent to be evicted from the Property. Whilst the Applicant may seek an increase in rent which may indeed change matters in the future the Tribunal requires to determine matters as they are at today's date. The Tribunal was not provided any information in relation to the financial pressures that the Applicant was facing that required an Order to be granted. The Tribunal take account of the circumstances in which the arrears have arisen, the fact that the Respondent paid rent on time before the pandemic and that the Respondent continues to meet the rental due. The Tribunal also takes account of the fact the Respondent initially attempted to resolve the arrears issue directly and then entered into a debt management scheme. The Tribunal also takes account of the Respondent's personal circumstance, the difficulties her autistic son would face if the Order were granted and the fact

she now has obtained a new job and will endeavour to pay further amounts towards the arrears that have arisen. In all of the circumstances the Tribunal is not satisfied that it would be reasonable to grant the Order and the application is refused.

46. Rule 17 of the Regulations states that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. The Tribunal decided that, on the basis of the information presented to it, and at the invitation of both parties it was able to determine the application at the CMD.

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.



Yvonne McKenna

4 August 2022

Legal Member/Chair

Date