



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/22/0952

Re: Property at 16 F1 Granton Medway, Edinburgh, EH5 1HJ (“the Property”)

Parties:

Mrs Kathi Wordie, Mr Brian Wordie, 6 Christopher Road, East Grinstead, RH193BT (“the Applicant”)

Ms Leah Small, Mr David Hay, 16 F1 Granton Medway, Edinburgh, EH5 1HJ; 47/4 Muirhouse Gardens, Edinburgh, EH4 4TA (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be made against the Respondents

Introduction

1. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 13 June 2022.

Procedural Background

3. The CMD took place by teleconference at 2.00 pm on 26 July 2022.
4. The applicants were represented by Mr Daniel Halasz of IV Properties Ltd (formerly known as Twin Pillars Property). The first respondent joined the

teleconference personally and represented her own interests. The second respondent failed to participate in the teleconference hearing.

Findings and Reasons

5. The property is 16 (F1) Granton Medway, Edinburgh EH5 1HJ.
6. The applicants are Mrs Kathy Wordie and Mr Brian Wordie. They are the heritable proprietors of the property and the registered landlords. The respondents are Ms Leah Small and Mr David Hay who are the named tenants.
7. The parties entered into a private residential tenancy which commenced on 20 March 2019. The rent was stipulated at £800 per month.
8. The respondents have fallen into arrears of rent. At the time that the Notice to Leave was prepared and served, the rent arrears totalled £5,240.40. As at the date of application, the rent arrears had risen to £ 12,870.40. As at the date of the CMD the arrears outstanding had risen to over £16,000, with the last rental payment having been made in October 2021. A detailed rent statement which evidences this has been produced. The Tribunal found this a credible and reliable document and attached weight to it.
9. The current eviction proceedings are based upon the arrears of rent and the relevant ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.
10. Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods had been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and was one of 6 months at the time that the Notice to Leave was served.
11. The Notice to Leave which is relied upon is dated 2 August 2021. With reference to Section 62 of the Act, the day specified as being the earliest day upon which proceedings before the Tribunal can be raised required to be a total of the notice period of 6 months plus an additional three days. That date referred to within the Notice to Leave was specified as 5 February 2022. This is correct. The Notice to Leave was prepared validly.
12. The applicant has produced Post Office track and trace data which discloses that the Notice to Leave was received by the post office on 2 August 2021 and there is a corresponding royal mail signed for confirmation showing that the item was delivered on 4 August 2021. The early service by one day does not invalidate the Notice.

13. The Tribunal was satisfied that the Notice to Leave was validly prepared and served and can be relied upon. No challenge has been taken to the Notice to Leave on behalf of the respondents.
14. The Tribunal was satisfied that more than three consecutive months of rent was unpaid at the time that the Notice to Leave was served and at the date of the hearing. This establishes ground 12.
15. The first respondent accepted that the substantial rent arrears exist. She was not opposed to an eviction order being made. She has taken advice from Citizens Advice. The second respondent is aware of the proceedings and has elected not to enter appearance or oppose the application. Tribunal proceeded to consider the issue of reasonableness.
16. The respondents were previously in a relationship. They are now separated and the second respondent no longer lives in the property. The first respondent is in part time work as a receptionist. She is the single mother of four dependent children who are 14, 10, 7 and 4 years. Neither the first respondent or her children have any disabilities or other vulnerabilities.
17. The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondents in the absence of them making rental payments.
18. Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020. Compliance has been evidenced.
19. The respondents have not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which could have covered rent arrears for the period 23 March 2021 to 9 August 2021).
20. The applicants have served a valid Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. It is most likely that in the event of an Eviction Order being granted the local authority will make alternative accommodation available for the first respondent and her children. She has already been in communication with the local authority and has been asked to produce the Eviction Order when made. She is hopeful that suitable alternative accommodation will be offered.
21. There is a lengthy history of rent arrears and it is not reasonable that the applicants require to continue to maintain the accommodation available for the respondents in such circumstances. No payment of rent at all have been made at all since October 2021.

22. In all the circumstances, the Tribunal concluded that it was reasonable to make the eviction order sought.

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.

R Mill

26 July 2022

Legal Member/Chair

Date