



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/3198

Re: Property at T/L 6E York Way, Renfrew, PA4 0NG (“the Property”)

Parties:

Mr Ross Martin, 9 Kinmount Avenue, Glasgow, G44 4RR (“the Applicant”)

Miss Chloe Kernachan, Miss Stacey Kernachan, Mr James Gallacher, T/L 6E York Way, Renfrew, PA4 0NG (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant’s application for possession of the Property from the Respondent is refused

Background

The Applicant was the owner of the Property. He had let it to the Respondent under a Private Rented Tenancy in terms of the Act. The Respondent had been the tenant of the Property since 1 June 2019. The Respondent had fallen in to arrears of rent and the Applicant had then applied to the Tribunal seeking to have the Respondent evicted from the Property.

Case Management Discussion 1 (CMD1)

A Case Management Discussion took place on 20 December 2022 before the Tribunal Members. The Respondent represented themselves. The Applicant was represented by Bannantyne Kirkwood France & Co, Solicitors, Glasgow.

At CMD1, both parties agreed that as at that date there were arrears of rent of £2745. The Applicant sought possession on the basis of Schedule 3 of the Act in that the

Respondent had been in arrears of rent for a period in excess of 3 months and the total arrears exceeded 1 month.

Much of the discussion focused on whether it was reasonable to grant the eviction. In terms of s43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 the Tribunal now had a discretion as to whether to grant the, whereas previously it would have required to grant the order based on the level of arrears.

The Respondent highlighted that they had a daughter who was shortly to sit exams and a move would disrupt her preparations. Both Mr Gallacher and Miss Kernachan had suffered from ill health and had been unable to work but their situation was improving. They were confident they could address the arrears through payments Mr Gallacher was due through a workplace savings scheme and that they wouldn't fall in to arrears again as they were both now working. The Property was their family home, they had lived there for several years. They liked the Property and were keen to remain.

The Applicant's representative submitted that previous promises of payment and repayment plans had not been adhered to and there was no reason to think this time would be any different. She submitted that the Applicant faced rising interest payments and had been unable to make repairs to the Property that he wished to as a result of the rental arrears. On that basis, she submitted it was reasonable to grant the order.

In addition to this application, the Applicant was seeking a payment order for the rental arrears. The Tribunal had determined to continue that application to a further CMD as further information in relation to a time to pay application was required. The Tribunal determined to continue this application as well to a further CMD. The Tribunal had no information before it on the Applicant's interest payments and whether they were so significant as to cause him financial distress or as to the level of repairs required. The Applicant's representative did not have the information to hand. The Tribunal also wished to see more details on the health status of Ms Kernachan in particular. A more informed decision could then be made at the next CMD as to whether it was reasonable to evict in the circumstances

Case Management Discussion 2 (CMD2)

CMD2 took place on 16th March 2023 before the same Tribunal Members as CMD1. The Respondents again represented themselves and Bannantyne Kirkwood France & Co again represented the Applicant.

The parties confirmed that as at the date of CMD2, the arrears of rent had been cleared. Payments of over £1000 had been made on 20, 21 and 28 February. The final arrears had been cleared the day before CMD2.

The Applicant's representative sought the eviction order. Notwithstanding that the arrears had now been cleared, the payment had been outstanding at the date of CMD1. The arrears had been cleared only just prior to CMD2 and the payment history remained chequered. The Applicant had been put to financial hardship and whilst matters had been brought up to date the Applicant's view was that it was reasonable in the circumstances to grant the eviction order.

The Respondent accepted that they had a chequered payment history. They had not had any problems initially with the rent. However, they submitted they had both suffered with illness during Covid and that Ms Kernachan had had additional health complications. However, they were both now back working and had steady income. They did not envisage ongoing problems with payment. Even when they had been struggling financially they had made sporadic payments when they could – they accepted the obligation on them to pay rent. They had committed to making the payments from Mr Gallacher's workplace payment to the Applicant and they had done so. Being evicted would disrupt their daughter's exam schedule. It would move them from a home and area that they liked. Given that there were now no arrears, to evict them would be disproportionate, they submitted.

Findings in Fact

The Tribunal found the following facts to be established:-

1. The Applicant was the owner of the Property
2. The Applicant had rented the Property to the Respondent from 1 June 2019 under a Private Rented Tenancy at a monthly rent of £525
3. As at the date of CMD1 there were arrears of rent of £2745
4. As at the date of CMD2 there were no arrears of rent
5. The Applicant's monthly mortgage payment on the Property was £123.38

Reasons for Decision

The Tribunal considered the position. The Tribunal accepted that the Applicant may have suffered hardship due to the sporadic payments from the Respondent. However, that hardship had retrospectively been removed by the payment of the arrears. The Tribunal noted that the Applicant had a modest monthly mortgage payment of £123.38. Whilst there had been arrears there had been sporadic payments and these would have been enough to provide the Applicant with funds to pay the mortgage. Reference had been made at both CMD1 and CMD2 to the Applicant not being able to carry out repairs to the Property. No information as to what repairs these were and how much they cost had been given and so the Tribunal gave this particular point little weight. No works had been carried out so no costs had been incurred. The Applicant now had the full rental paid to him since the lease was granted so he could now carry out repairs should he so wish.

The Tribunal considered the submission of the Respondent. The Respondent appeared genuine in their desire to remain in the Property. They had carried out what they had indicated at CMD1 – that they would repay the arrears in full. The Tribunal had no reason to doubt that their daughter was due to sit her exams and that this would cause a degree of disruption.

The Tribunal noted that the Respondent had suffered disruption to their financial position because of illness. This appeared to now have passed and they appeared to be on a firmer financial footing. The Applicant had now been paid all sums due to them.

Taking all of the information in the round, there appeared to be no material hardship or detriment to the Applicant by the Tribunal exercising its discretion and declining to grant the order for possession. In the absence of any arrears at CMD2 and the disruption that an eviction would cause a family that were just getting back on their feet, the Tribunal viewed an order for possession as disproportionate in the overall circumstances.

Decision

The Tribunal determined to refuse the Applicant's application for an order for possession

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.

16th March 2023

Legal Member/Chair

Date