



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/22/3509

Re: Property at Craigievar House, 76/16 Craigmount Brae, Edinburgh, EH12 8ZQ (“the Property”)

Parties:

Castle Rock Edinvar In Association With Places for People Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”) per their agents, Patten and Prentice LLP, 2 Ardgowan Square, Greenock, PA16 8PP (“the Applicant’s Agents”)

Mr Scott Fairley, Craigievar House, 76/16 Craigmount Brae, Edinburgh, EH12 8ZQ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 27 September 2022 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of the Act that the Respondent is in rent arrears over three consecutive months. The Application comprised a copy of private residential tenancy agreement between the Parties, copy rent statement showing rent arrears since June 2021, copy correspondence to the Respondent satisfying the pre-action requirements, copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 31 January 2022 and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 26 January 2023 at 10.00 by telephone conference.

CMD

3. The CMD took place on 26 January 2023 at 10.00 by telephone conference.
The Applicant did not take part and was represented by Miss Melissa Wilson of Applicant's Agents. The Respondent was not present and was not represented. The Respondent did not submit written representations.
4. Prior to the CMD, the Respondent contacted the Applicant's Agents in respect of the proceedings and so the Tribunal is satisfied that the Respondent is aware of the CMD and proceeded in his absence.
5. Miss Wilson advised the Tribunal that the Respondent had applied to the Applicant for housing as a single man, in employment as a labourer and residing in temporary accommodation who required permanent housing for access visits from his two children, one of whom was born in 2017. She explained that arrears have accrued since the beginning of the tenancy and that attempts have been made to encourage the Respondent to pay, with a payment plan being arranged and not adhered to by him. Miss Wilson advised the Tribunal that the Respondent had recently advised the Applicant and the Applicant's Agents that he is now unemployed and in receipt of benefits of £665.00 per month, offering to pay that sum and a further £300.00 per month towards the arrears. Miss Wilson advised further that housing benefit of £253.00 had been received for a short time last year. She submitted that, as the arrears now amount to £11,275.60, the Respondent's offer is not acceptable to the Applicant as it is not realistic or tenable given his income.

Findings in Fact.

6. From the Application, the documents lodged and the CMD, the Tribunal made the following findings in fact:-
 - i) There is a private residential tenancy of the Property between the Parties at a monthly rent of £665.00 which began on 12 May 2021;
 - ii) Although housing benefit payments of £253.00 per month were made on his behalf from April to December 2022, the Respondent has not paid rent since June 2021 and has accrued arrears of £11,275.60;
 - iii) The Respondent is a single man who is not in employment;
 - iv) The Respondent has two children who visit him but who do not reside with him;
 - v) The Respondent's offer to pay £965.00 per month towards the arrears and rent is not realistic.

Decision and Reasons for the Decision


7. Having found in fact that the statutory provisions for the termination of the tenancy have been complied with, the issue for consideration by the Tribunal is to determine if it is reasonable to grant the Order.

8. The Tribunal had regard to the whole circumstances of the matter. **Notwithstanding the fact that the Respondent, himself, has not paid rent for a considerable time, Tribunal had regard to the fact has been in touch with the Applicant's Agent expressing concern at the Application and the prospect of eviction and that he has made an offer to pay.** The Tribunal had regard to the Applicant's position that the offer to pay is not acceptable and that a previous payment plan was not adhered to. The Tribunal agreed with the Applicant that the Respondent's offer is not tenable or realistic. The Tribunal had regard to the Respondent's need to have permanent accommodation for visits from his children. The Tribunal had no information or evidence in respect of the nature and frequency of those visits and took the view that, on the balance of probabilities, as the children do not reside with the Respondent, they have settled accommodation elsewhere. Accordingly, in all the circumstances, the Tribunal found that it is reasonable to grant the 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.

K. Moore

Legal Member: Karen Moore

26 January 2023
Date