



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/3119

Re: Property at 84 Garry Park, Glenraig, KY5 8AG (“the Property”)

Parties:

Chertsey Investments Ltd, Brewlands House, Dalkeith, EH22 3AD (“the Applicant”)

Mr John Cunningham, Ms Amanda Oswald, 84 Garry Park, Glenraig, KY5 8AG; 84 Garry Park, Glenraig, KY5 8AG (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. The applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) by application dated 29 August 2022.
2. Accompanying the application were the following documents:
3.
 - (a) Private Residential Tenancy Agreement
 - (b) Rent Arrears Statement
 - (c) Notice to Leave and Sheriff Officers Execution
 - (d) Section 11 Notice to Local Authority
 - (e) Pre-action correspondence
4. It was narrated in terms of the application that the respondents had entered into a Private Residential Tenancy Agreement for the property at 84 Garry

Park, Glencraig KY5 8AG with rent due at the rate of £450 per calendar month payable monthly and in advance. Rent arrears had begun since 8 November 2019. As at 8 August 2022 rent arrears stood at £4,350.

5. The application was acknowledged by the tribunal on 31 August 2022. Certain further information was sought.
6. On 14 November 2022 the application was accepted for determination by the tribunal.
7. Intimation of the application was made upon both respondents by sheriff officer.

Case Management Discussion

1. At the case management discussion Mr Gray from Gilson Gray LLP attended on behalf of the applicant. Both respondents Mr Cunningham and Ms Oswald attended on the teleconference.
2. The respondents were asked what their position was regarding the application. It was indicated that they opposed eviction. The basis of opposition was not in relation to the outstanding amount of rent or that rent had been outstanding for more than three consecutive months but dealt with a series of reasonableness issues surrounding the respondents.
3. The arrears of rent were now accepted as being £7,050. The respondents also acknowledged that they were not withholding the payment of rent. Rent had simply not been paid.
4. Mr Cunningham's position was that he has suffered from recent health concerns. He required regular check ups from his doctor. He and Ms Oswald had separated in April 2022. He had remained within the property. Ms Oswald had left.
5. They had only recently recommenced their relationship in January 2023.
6. Mr Cunningham had not been working. He had mental health issues. However he was a joiner by trade. He was looking to work again shortly.
7. He had shared care of his 16 year old son. His son was autistic.
8. His son should be staying with him much more but there had been problem with the property. There was water coming in through the ceiling. There was mould. His doctors advised him that certainly his son should not be living

there. He advised that all this information had been passed on to the landlord.

9. The roof of the property had not been fixed. Although tradespersons had been sent Mr Cunningham did not regard them as being sufficient qualified to undertake the work.
10. Mr Cunningham also suffered a recent bereavement in his family.
11. His telephone was also broken.
12. At the same time he had, despite not working, not been able to obtain benefits in order for the rent to be paid. The last payment towards rent was made in May 2022.
13. There had been no application to the tribunal for a repairing standard enforcement order.
14. He had not approached the Council regarding being rehoused.
15. He was offering £700 per month now with the first payment on 27 March 2023 as a payment towards rent and arrears. His mother would assist him.
16. Mr Gray noted that since the application was raised nothing had been paid to the rent. The rent arrears was now significant. There was no suggestion that rent was being withheld due to the state of the property.
17. Mr Gray conceded that there was work to be done to the roof. However there were issues with getting a roofer to fix the property because of difficulties with the respondent.

Findings in Fact

1. The parties entered into a Tenancy Agreement for the rental of the property at 84 Garry Park, Glenraig KY5 8AG.
2. Rent was due in terms of the lease at the rate of £450 per calendar month payable monthly and in advance.
3. Rent arrears have existed on the property since 28 October 2019.
4. As at the date of the application rent was outstanding at the sum of £4,350.
5. As at the case management discussion the sum outstanding of arrears was £7,050. The respondents were in arrears of significantly more than three or more consecutive months of rent arrears.

6. The respondents had not withheld the payment of rent due to the condition of the property.

Reasons for decision

1. The respondents accepted the amount of rent outstanding now at £7,050. This was significantly more than three consecutive months of rental arrears. rental arrears had started on 28 October 2019. There had not been a payment of rent since May 2022. This was a significant amount of rent arrears.
2. Accordingly the tribunal were of the view that the criteria were made out for the order and the issue became one of reasonableness.
3. It was noted that Mr Cunningham the respondent had a significant amount of personal circumstances. He had his own both physical and mental health issues. He had a son who was autistic who he was due to be sharing the care of. There were alleged issues with the property. It was however to be noted that in relation to the property no application had been made to the tribunal in respect of a repairing standing enforcement order and it did not appear that the respondents had availed themselves of any help in relation to the condition of the property. Nothing was lodged in terms of correspondence regarding the property.
4. The tribunal accepted that Mr Cunningham did have health issues but that did not mean that the order should not be granted. No efforts had been made to reduce the arrears. It did not appear that any contact had been made with an advice agency. There was no benefits being paid to certainly Mr Cunningham. The arrears were continuing to increase. Nothing had been paid since May 2022.
5. The tribunal's position was that it remained reasonable to evict. It appeared that both respondents had at times had alternate accommodation to live in. They could make application to the local authority in respect of homelessness and in addition clearly Mr Cunningham's son had other accommodation with his mother.
6. For all these reasons the tribunal granted the order.

Decision

To make an order of 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.

M Thorley

1 March 2023

Legal Member/Chair

Date