



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/22/0020

Re: Property at 26 Glebe Street, Hamilton, ML3 6PS (“the Property”)

Parties:

Mr Alexander McCallum, Mrs Angela McCallum, 32a Portland Place, Hamilton, ML3 7JU (“the Applicants”)

Mr Scott Murray, 26 Glebe Street, Hamilton, ML3 6PS (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted under ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, and that the Private Residential Tenancy between the parties terminated on 22 July 2022.

STATEMENT OF REASONS

1. This Application called for its Hearing by teleconference call on 22 July 2022, together with the related Application for a payment order (CV/22/0021). The Applicants were represented by Mr Gildea. The Respondent was neither present nor represented.
2. In this Application, the Applicants seek an eviction order. They say that Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 is satisfied, in that the Respondent has been in rent arrears for three consecutive months, rent arrears are outstanding, and it is reasonable to grant the order.

3. This Application previously called for a Case Management Discussion on 5 May 2022. At that CMD, the Respondent admitted that he had been in rent arrears for three consecutive calendar months and that rent arrears remained outstanding. His position then was that it was not reasonable to grant the eviction order. In support of that proposition, he stated the following:-
- a. The Respondent's current circumstances are a consequence of the Covid-19 pandemic.
 - b. Having started employment at what he described as his "dream job", the Respondent was made redundant during the first national "lockdown" in 2020.
 - c. The Respondent has struggled to find settled employment since then. He spoke of working briefly for different delivery companies, as well as a brief period of self-employment during 2021.
 - d. As a consequence of his irregular employment, the Respondent was unable to make regular rent payments, and was also unable to pay Child Maintenance.
 - e. The Respondent's circumstances have caused him to suffer from mental health issues, including depression, for which he is receiving treatment.
 - f. In particular, the Respondent spoke of being suicidal and of having received intervention from the charity The Samaritans.
 - g. During 2021 the Respondent sold his car. He used the proceeds of the car sale to make a lump sum payment towards his rent arrears.
 - h. The Respondent has recently commenced employment as an Area Manager for an industrial cleaning company. His role principally relates to the cleaning of new-build residential properties.
 - i. The Respondent received an advance payment of salary in late February 2022, but has not received further salary payments since then.
 - j. The Respondent is due to receive a full salary payment on 13 May 2022.
 - k. The Respondent expects his net monthly salary to be in the region of £1,600-£1,700.
 - l. The Respondent's approximate monthly outlays are as follows:-
 - i. Rent - £450
 - ii. Child Maintenance - £250
 - iii. Contribution to debt with ex-partner - £75
 - iv. Personal loan repayment to mother - £165
 - v. Mobile telephone - £55
 - vi. Council tax - £90
 - vii. Utilities - £200
 - viii. Groceries and household - £240
 - m. The Respondent's total monthly expenditure is approximately £1,525.

- n. The Respondent expects to have a monthly surplus of income in the region of £75-£175.
- o. The Respondent has offered to pay rent plus £150 per month towards his arrears, but that offer was refused. The Applicants took approximately four weeks to respond to the offer.
- p. The Respondent is hopeful that he will be able to pay a lump sum towards the arrears in early course, but that is dependent on his receiving financial assistance.
- q. The Respondent expects to be eligible for a salary increase within the next three months.
- r. The Respondent has a son, whose ordinary residence is with the Respondent's ex-partner.
- s. The Respondent requires the property to engage in meaningful contact with his son.
- t. The Respondent would lose his job if he was made homeless.
- u. The Respondent's mental health would be negatively affected if he was to be evicted.

4. At the CMD, the Applicants' representative was stated in the following terms:-

- a. The Respondent has been in rent arrears for some 12-18 months.
- b. The Respondent appears to have prioritised payment of other debts over his rent during that time.
- c. The Respondent suggested that he had received payment of advance salary in February 2022, but had only paid £500 towards his rent account since the Applications were raised.
- d. The Applicants have produced a significant volume of emails from their letting agents demonstrating attempts to engage with the Respondent.
- e. The Respondent resides alone. His son is not ordinarily resident at the Property. The Respondent is not his son's primary care giver.
- f. The Applicants have mortgage lending over the Property. They were not entitled to a payment holiday because the property is a commercial interest for them. They have continued to pay the mortgage whilst the Respondent has failed to pay rent.

5. At the Hearing, Mr Gildea supplemented the Applicants' previous position as follows:-

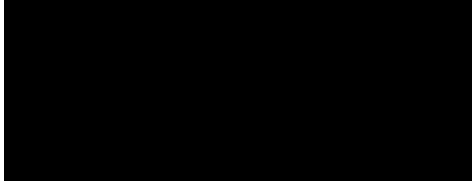
- a. The Property is the only property let by the Applicants;
- b. The Applicants are dependent on the income generated by the Property;
- c. The Applicants are in receipt of a small private pension;
- d. The Applicants are not in receipt of any benefits and do not qualify for a state pension;

- e. One of the Applicants, Mrs McCallum, has been battling cancer in recent months, but has recently been given the “all clear”; and
 - f. The ongoing issues with the Respondent are causing stress to the Applicants, and Mrs McCallum in particular.
 - g. The Respondent made payment of £600 in each of May and June 2022, comprising a rent payment of £450 plus a £150 payment towards the arrears.
 - h. The Respondent made no payment to the Applicants in July 2022.
 - i. The rent arrears have increased from £2,350 to £2,500.
6. In light of the Respondent’s admissions at the CMD, the only question which the Tribunal requires to determine at the Hearing is whether it is reasonable. Notwithstanding the Respondent’s failure to attend the CMD, the Tribunal had regard to all of the matters which the Respondent outlined at the CMD, as well as those set out on behalf of the Applicants at the CMD and the Hearing. Neither party had sought to dispute the veracity of what the other had said.
7. Having regard to all of the circumstances, the Tribunal was satisfied that it is reasonable to grant the eviction order. Notwithstanding the payments made by the Respondent since the CMD, the Tribunal considered that (i) the failure to make any payments to the Applicants in July 2022, (ii) the failure to provide an explanation for the lack of payment in July 2022, and (iii) the failure to attend the Hearing were indicative that the Respondent had once again defaulted on his obligations, and inspired no confidence that he would remedy his default. It is not reasonable to expect the Applicants to put up with this unreliability regarding the Respondent’s approach to his obligations; which unreliability is itself causing stress and anxiety to the Applicants with a detrimental impact on their health.
8. Accordingly, for all of those reasons, the Tribunal was satisfied that an eviction order should be granted under ground 12.
9. For the purposes of section 51(4) of the 2016 Act, the Tribunal determined that the Private Residential Tenancy between the parties came to an end on 22 July 2022.

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.



22 July 2022

Legal Member/Chair

Date