



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/21/3191

Re: Property at 68 Abbotsford Road, Arbroath, DD11 5HQ (“the Property”)

Parties:

Mr Brian Simpson, 3 Rankine Court, Wormit, DD6 8TA Mr Paul Goodman, RentLocally Tayside & Fife, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the applicant”)

Ms Norina Daly, formerly residing at the property and now at 80, Newton Avenue, Arbroath, DD11 3LH and Mrs Denise Lawlor, residing at 68 Abbotsford Road, Arbroath, DD11 5HQ; 80 Newton Avenue, Arbroath, DD11 5HQ (“the respondents”)

Tribunal Members:

David Preston (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for eviction be granted in favour of the applicant

Background

1. By application dated 16 December 2021 the applicant applied to the tribunal for an Order for eviction and possession of the property on the basis of ground 8 of Part 1 of Schedule 5 to the Housing (Scotland) Act 1988.
2. The papers before the tribunal comprised: Short Assurance Tenancy Agreement dated 3 June 2015; Notice to Quit dated 4 March 2021; Notice under section 11 of the Homelessness etc (Scotland) Act 2003; Certificate of Intimation dated 9 March 2021; form AT5 dated 3 June 2015; form AT6 dated 4 March 2021; log of communications with the respondents between 16 February 2021 and 11 January 2022; pre-action protocol letters dated 11

January, 16 & 25 February 2022; and rent statement covering the period July 2016 December 2021.

3. By Decision dated 31 January 2022, convener of HPC having delegated power for the purpose, referred the application under rule 9 of the rules to the tribunal.

Case Management Discussion (CMD)

4. A CMD was convened on 6 April 2022 by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. Mr Goodman attended by telephone on behalf of the applicant and the respondents attended on their own behalf.
5. Ms Lawlor advised that she had not lived at the property for 18 months, since the middle of 2020. She explained that she had assaulted her mother and, as a result, had been excluded from the property and had been housed as a homeless person by the local authority at her present address. She confirmed that she had not advised the landlord or the letting agent that she had left as she was not aware that she should have done and she had not made any payment towards the rent since leaving.
6. Mrs Daly said that she remained in the property and that the local authority had been paying her share of the rent. She was unable to afford the balance of the rent. She advised that she was unable to read or write and was not aware of any communications from the letting agent regarding the arrears of rent or any difficulties.
7. Ms Lawlor advised that she had assisted her mother to submit a housing application to the local authority in an effort to obtain alternative, more suitable, accommodation. An individual from the council named John had been allocated to her. It was accepted by both respondents that Mrs Daly is unable to remain in the property but requires to be rehoused. She is elderly and, as noted, is unable to read or write. In addition, the property is too large for her purposes.
8. Ms Lawlor confirmed that she would continue to assist her mother in relation to seeking re-housing from the local authority.
9. Mr Goodman pointed out the extent of the arrears of rent which had accumulated to £4300.50p until December 2021. He referred to the pre-action protocol letters which had been sent to the respondents at the property. He was unaware of the fact that Ms Lawlor had left the property and was also unaware that Mrs Daly was unable to read or write. He said that the applicant had been very patient in dealing with the matter and had followed all the necessary procedures. As a consequence, he submitted that the applicant was entitled to an Order for eviction.

10. Ms Lawlor confirmed her new address and email address. She advised that the best method of communicating with her mother was via this email and granted permission for the intimation of today's decision by email.

Reasons for Decision

11. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that on the basis of the information presented to it, it was able to determine the application at the CMD.
12. The tribunal was satisfied that the terms of ground 8 of the Housing (Scotland) Act 1988 were satisfied and that the applicant had followed all necessary procedures in relation to service of proper notice and pre-action requirements protocol information.
13. The respondents did not seek to defend their position in relation to the arrears and frankly accepted responsibility for the arrears but explained that Mrs Daly was unable to afford the full rent of the property.
14. The tribunal is required to be satisfied that the granting of an Order for eviction is reasonable in all the circumstances. It considered that it was in the interests of all parties that the tenancy be brought to an end as soon as possible to avoid further arrears accruing. The tribunal noted that the respondents were taking active steps to seek re-housing for Mrs Daly, and it considered that the local authority would be in a better position to progress such an application if an Order were to be in place.
15. Accordingly, the tribunal determined that, in all the circumstances it was reasonable that an Order for eviction should be granted as sought.

Right of Appeal

In terms of Section Form AT6 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.

David Preston

6 April 2022