



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/3892

Re: Property at 7 Barrington Gardens, Beith, KA15 2BA (“the Property”)

Parties:

Mr Nigel Siddall, Mrs Fiona Siddall, 14 Ludwig Van Beethoven, Porta D'Orba, Orba, 03790, Spain (“the Applicants”)

Mr Reg Tyler, Mrs Lesley Tyler, 7 Barrington Gardens, Beith, KA15 2BA (“the Respondents”)

Tribunal Members:

Alastair Houston (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made on the basis of paragraph 1 of schedule 3 of the 2016 Act.

1. Background

- 1.1 This is an application for an eviction order in respect of a property let on a private residential tenancy agreement. The application was accompanied by, amongst other things, copies of the notice to leave served on the Respondents and notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003.
- 1.2 A conjoined application (reference FTS/HPC/CV/22/3238) was also being considered by the Tribunal. That application was accompanied by an unsigned written tenancy agreement between the parties.
- 1.3 The First Applicant had sent further documentation to the Tribunal in advance of the Case Management Discussion. This included a rent statement, demonstrating allegedly unpaid rent, and a request to amend

the ground upon which the Tribunal considering making an eviction order to ground 12A. An email had been received from the First Respondent advising that a payment of £700.00 had been made on 3 April 2023 and payment of the arrears would be made at the rate of £50.00 each month going forward.

2. The Case Management Discussion

- 1.1 The Case Management Discussion took place on 12 April 2023 by teleconference. The First Applicant appeared personally. The Respondents were neither present nor represented.
- 1.2 The First Applicant confirmed that the applications were insisted upon. The Tribunal noted that intimation of the applications and the Case Management Discussion had been made to the Respondents. Accordingly, the Tribunal considered it appropriate to proceed in their absence as permitted by Rule 29 of the Chamber Rules.
- 1.3 The Tribunal first clarified the position regarding the First Applicant's standing in terms of the application. The First Applicant confirmed that his wife, Fiona Siddall, was the heritable proprietor of the property. She was the landlord and he was acting as her agent. Payment of rent had been made a an account held jointly by the First Applicant and his wife.
- 1.4 The First Applicant advised that arrears of rent had accrued following service of the notice to leave in July 2022. As these now exceeded six months, he was seeking the Tribunal's permission to consider making an eviction order on the additional ground 12A, that being substantial rent arrears. This was done in order that he could evict the Respondents more quickly. A second notice to leave had been issued to the Respondents however, the period of notice had not yet elapsed.
- 1.5 The First Applicant confirmed that he and his wife had taken a decision in February or March 2022 to liquidate their property portfolio in the United Kingdom for tax planning reasons. This consisted of nineteen tenanted properties. All tenants had been contacted offering them an opportunity to purchase their respective properties. A purchaser of the properties as an investment portfolio had not been found. As at the date of the Case Management Discussion, only four properties remained to be sold.
- 1.6 Following service of the notice to leave, the Respondents failed to make payment of rent. The Respondents were the sister and husband of the First Applicant's wife. They were aged 67 and 52. To his knowledge, the First Respondent was not in full time employment. The Second Respondent did not work. They did not have anyone else residing with them. They did not receive benefits to assist with housing costs. The First Respondent had previously been paid by the First Applicant to assist with management of the Applicants' rental properties however, this arrangement had ended around six months ago. Despite emails being sent to the Respondents, no contact had been received from them and

no explanation for the arrears had been provided. A payment of £700.00 had been received from the Respondents on 3 April 2023 however, the proposed rate of repayment of the arrears did not affect the decision taken to sell the property.

3. Reasons For Decision

- 3.1 The Tribunal firstly considered who ought to be considered the landlord for the purpose of any order issued. Given what was said at the Case Management Discussion and that she was the proprietor of the property, the Tribunal considered that Mrs Fiona Siddall ought to be added in as the Second Applicant, with any order issued in both of their names. The First Applicant was acting as her authorised agent and had entered into the tenancy contract with the Respondents. This is reflected in this decision and the order to which it relates.
- 3.2 The Tribunal then considered the request for permission to have the Tribunal consider issuing an eviction order on the basis of an additional ground, being ground 12A, which was not included in the notice to leave previously served on the Respondents. The Tribunal declined to grant permission. A second notice to leave had been served specifying a date after which any application to the Tribunal would be made. The First Applicant's intention to request permission for ground 12A to be considered was only made on 3 April 2023. The Tribunal considered this to be a new issue which would not allow sufficient time for the Respondents to be permitted 14 days, as required by Rule 14 of the Chamber Rules, to make any written representations in respect of the new issue.
- 3.3 The Tribunal did, however, consider that it was entitled to make an eviction order on ground 1, that being the ground relied upon by the First Applicant in the notice to leave served in July 2022. Before doing so, the Tribunal required to consider whether it was reasonable to do so. The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 3.4 The Tribunal was mindful that no representations, beyond the confirmation of the £700.00 payment made on 3 April 2023 and the offer to make payment of the arrears at the rate of £50.00 per month, had been made by the Respondents as to their circumstances and the reasonableness of granting an eviction order. Furthermore, they did not appear at the Case Management Discussion. In the absence of any further information as to their position, the Tribunal accepted that said on behalf of the Applicants. A reasoned decision to liquidate a property portfolio had been made. The Respondents did not appear to have any dependent children residing with them. The Tribunal was not aware of any particular vulnerabilities or

inability to secure alternative accommodation. Accordingly, the Tribunal considered it reasonable to make an eviction order.

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.

Alastair Houston

Legal Member/Chair

Date 12 April 2023