



Decision 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/23/2259

Re: Property at 141 Craigieburn Road, Cumbernauld, G67 2LZ (“the Property”)

Parties:

Ms Catherine Hunter, 2a Westmount Park, Newtownards, BT23 4BP (“the Applicant”)

Ms Pauline McElwee, 141 Craigieburn Road, Cumbernauld, G67 2LZ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gordon Laurie (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 possession be granted.

1. This was a case management discussion (“CMD”) in respect of an application by the Applicant dated 6th July 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 7th April 2018 with a commencement date of 7th April 2018
 - Copy Notice to Leave dated 16th May 2023
 - Certificate of execution of delivery of Notice to Leave by Sheriff Officers dated 16th May 2023
 - Copy S 11 Notice and evidence of delivery to North Lanarkshire Council on 15th June 2023
 - Copy PARS letter to the tenant dated 10th February 2023.

The CMD

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Mr John MacAulay of Ennova Law.
4. The Applicant was seeking eviction on Ground 12 of Schedule 3 to the 2016 Act
5. The Respondent did not attend nor was she represented on the teleconference. The Respondent had been served a copy of the application and papers by Sheriff Officers on 9th October 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence.
6. Mr MacAulay advised that the Applicant is the sole owner and director of the Cisum Ltd which owns the Property and he explained that she had created the company to hold properties for renting out but thought it was an oversight that the lease and application had been put in the Applicant's name as an individual and not the company's name but he advised that she is the sole director and owner of it.
7. He advised that he had earlier that day lodged a revised rent statement and second PARS letter and apologised for the late submission. The Tribunal indicated they had just received it and asked Mr MacAulay to explain what his client was seeking. He advised that the tenant has been in arrears for some time with low level arrears, but that the tenant was receiving universal credit of £360 and had been paying the balance of £190 herself until December last year when no payment was made to top up the universal credit. He also explained that in February after the letting agent contacted the DWP the Applicant started receiving £52.57 direct from DWP. This amount had increased to £57.88 from May 2023 leaving a current monthly shortfall of £132.12. Mr MacAulay advised that he, the letting agent and the Respondent had been in contact in April to try and agree some payment of the arrears but no further payment has been received over and above the monthly sums of £417.88 leaving a regular shortfall which he advised meant the arrears are now £2,464.67.
8. Mr MacAulay advised that the Applicant, who is now retired, does own the company which rents out several properties and confirmed she is reliant on this income. He advised that due to the cost of living increases and the increase in mortgage payments for some of the other properties she is finding this is having an impact on her income. He submitted that as the rent arrears are steadily rising and the tenant is not communicating about them it would be reasonable to grant the order.
9. Under questions he confirmed that the tenant lives alone and he believes she is unemployed. Although there is a guarantor named in the lease he was not aware if the guarantor had been approached for payment of the arrears.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 7th April 2018.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.

3. A notice to leave dated 16th May 2023 was served on the Respondent by Sheriff Officers confirming that no proceedings would be raised before 14th June 2023
4. These proceedings were raised on 6th July 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on North Lanarkshire Council
6. There were at least 3 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due is £550 monthly in terms of the lease.
8. The current rent outstanding is £2,464.67 including rent due on 7th November 2023.
9. The tenant has not paid the balance of the rent after benefits are received since December last year.
10. The Rent arrears are increasing by £132.12 per month.
11. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears since April 2023 and has made no response to this application.
12. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

- The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant grounds of eviction. The Tribunal accepted that the landlord is the sole owner and director of the company that owns the property and therefore had authority to appoint herself as Landlord and raise this action.
- The Notice to Leave referred to evidence of how the ground was met namely a rent statement, and the Applicant has sent 2 pre- action requirement letters advising the tenant where she can get help and support.
- Ground 12 require 28 days' notice under the rules which currently apply at the time of the service of the Notice. As the Notice was served by sheriff officer on 16th May 2023 and the notice period expires on 14th June 2023 the Notice is valid and this Application is timeous.
- The Tribunal was satisfied that the terms of Ground 12 were met namely that the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as one months' rent under the tenancy on the day the Tribunal considers the application and has been in arrears of rent for any amount for a continuous period up to and including the day the Notice to Leave was served, of three or more consecutive months. The Tribunal notes the Respondent has stopped paying a regular sum in addition to the payment of universal credit causing arrears to accrue further from December 2022. Despite some rent now being claimed direct from DWP there remains a monthly shortfall and over 4 months' rent is now due and owing. The Tribunal accepted that Ground 12 has been met.
- The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Mr MacAulay to be sincere and credible in his response to questions and accepted that the landlord had tried hard to come to an

arrangement with the Respondent in discussions in April but no further payments have been made. Given the Respondent has made no substantial effort to pay the arrears, is not paying anything towards the regular shortfall and has not communicated with the landlord or her agents relating to the rent arrears and has made no response to this application the Tribunal found that it was reasonable for an order to be granted. There are now around 4 months arrears of rent, the landlord is entitled to expect payment and it is likely that the rent arrears will continue to accrue as the tenant has made no offer or suggestion that she is able to or will pay these. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit and indeed the only payments currently being made are from benefits.

- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application. As the Cost of Living (Tenant Protection) (Scotland) Act 2022 will apply to this application there will be delay in the enforcement of the order of up to 6 months.

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.

Jan Todd

Legal Member/Chair

Date: 16th

November

2023