



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/23/2925

Re: Property at 25 Bellvue Crescent, Bellshill, North Lanarkshire, ML4 3AZ (“the Property”)

Parties:

Joyfields Properties Limited, Joyfields House, Douglas Avenue, Giffnock, Glasgow, G46 6NX (“the Applicant”)

Mr William Patterson, Miss Amy McMurray, 25 Bellvue Crescent, Bellshill, North Lanarkshire, ML4 3AZ (“the Respondents”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 24th August 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 15th November 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 11th January 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 6th December 2023.

3. On 16th November 2023, sheriff officers served the letter with notice of the CMD date and documentation upon both of the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 16th November 2023.
4. On 8th January 2024, the Applicant's representative emailed the Housing and Property Chamber with an updated rent account for the period 1st March 2022 to 1st January 2024. The arrears were stated as being £7140.
5. On 11th January 2024, the Applicant's representative emailed the Housing and Property Chamber lodging pre action requirement emails dating back to 7th June 2023.

The Case Management Discussion

6. A CMD was held on 11th January 2023 at 2pm by teleconferencing. The Applicant was represented by Ms Lauren Burns, Senior Property Manager, Cairn Letting. Ms Gemma Waters, Cairn Letting, was also present but was observing only. The Respondents were not present but were represented by Mr Jordan Bird, Hamilton CAB.
7. Ms Burns said that the Applicant was still seeking an order for eviction. The arrears are £7140 which is roughly equivalent to 12 ½ months rent arrears. There has been no communication about the rent account since the Notice to Leave was served upon them. Contact was made by the Respondents to the letting agent in December 2023 regarding a repair that needed to be done to the Property. This was done within 24 hours. There has been attempts at payment plans but these were not adhered to.
8. Ms Burns said that there had been an attempt for direct payments from the DWP. This had been refused by the DWP. She noted that Mr Patterson had been sick and unable to work which affected his situation.
9. Ms Burns said that the Applicant has a portfolio of around 30 properties. She was not aware if there was a mortgage on this property. Regardless the Applicant is not making any money on it as the rent arrears are accruing.
10. Mr Bird said the Respondents were not opposed to an order being granted. Mr Bird informed the Tribunal that Mr Patterson had suffered an assault in the early part of last year. He said that the impact of the assault has been significant upon the family and their income. Mr Patterson had been the main earner in the household but was unable to work after the assault. He was then on SSP until he was let go from his employment. He was unsure about Universal Credit entitlement but suspected that Ms McMurray's income was too high for him to claim for it. Mr Bird said that would have led to a zero level award. After six months zero level awards are closed. Mr Bird suspects that any claim of Universal Credit was now closed. It was noted by the Tribunal that the payment pattern prior the incident referred to in April 2023 was not significantly different to the payment pattern in the period following the incident.

11. Mr Bird said that there has been an application for Adult Disability Payment made for Mr Patterson. These applications can take up to 9 months to be determined. He was hopeful that, if awarded, that there would be a significant backdate which could address the arrears. Mr Bird confirmed to the Tribunal that there was no indication that an award was to be made in favour of Mr Patterson. Similarly, a Criminal Injuries Compensation Authority claim has been submitted but has not been determined. Mr Bird notes that while the granting of an order is not opposed, he motioned that the Tribunal supersede the Order enforcement date for a period of 3 months failing which the Tribunal should consider 8 weeks. This is to allow for a benefits check to be done to see if the outstanding arrears can be reduced in case of a civil action for the amount of arrears being sought. It will also allow the Respondents to address the arrears as they have been deemed as intentionally homeless by the local authority. He believes that they will be accommodated but only on the point of eviction. He said it would also allow time to pack up the Property as they live in it with their 5 year old child.
12. Mr Bird said that Mr Patterson is much improved and is hoping to return to the workforce. He noted that his mobility has not fully returned and that Mr Patterson will be looking for work where his mobility is not an issue.
13. The Tribunal considered it appropriate to grant an order for eviction. The arrears are more than 6 months rent arrears and the granting of an order is not opposed. However, given that have of the arrears accrued in the year prior to Mr Patterson's accident and that the arrears have continued to accrue and that there is no financial plan in place to prevent the arrears accruing that it was not appropriate to supersede the extract. Mr Bird had only been instructed the day before the Tribunal. The Respondents were served with the Notice to Leave on 11th July 2023 and served with the papers for this CMD on 16th November 2023. It is reasonable that the Respondents could have instructed Mr Bird well in advance of the CMD to enable benefits checks to be undertaken.
14. Mr Bird noted that he had no objection to the late lodging of documents by the Applicant's representative. He had no opposition to the fact that the Notice to Leave was served by Sheriff Officers rather than by email as per the PRT.

Findings and reason for decision

15. A Private Rented Tenancy Agreement commenced 18th November 2019.
16. The Respondent persistently failed to pay their rent charge of £560 per month. The rent payments are due to be paid on first day of each month. There are more than six months arrears on the account. The Respondents are in substantial rent arrears.
17. In April 2023 the First Named Respondent, Mr William Patterson, was assaulted and sustain an injury that resulting in him not being able to work. He was in receipt of only SSP in addition to his partner's part time wages. Mr Patterson had been the main household earner.

18. The rent account has been in arrears since March 2022 which is over a year before the assault.
19. The Respondents admit the arrears.
20. The Respondents are not opposed to an order for eviction being granted. Given this the Tribunal considered it reasonable to grant an order for eviction.
21. The Respondents have been continuously in arrears since March 2022. The arrears have constantly increased over that period. There has been a change to their income from April 2023 but it has not increased since then. It is not clear how they would be able address the ongoing rent charge never mind the arrears in the next 2 – 3 months. There is no guarantee of an award of benefits. It is reasonable to presume that during that time the arrears could accrue further. This would be prejudicial to the Applicant. The Respondents representative told the Tribunal of how the Respondents have been deemed intentionally homeless due to the arrears which they have accrued. Superseding the extract could reasonably be presumed to weaken further the Respondents position for being rehoused as they have not had an increase in their income and no guarantee of benefits. On this basis the Tribunal did not consider it reasonable to supersede the Order for any period beyond the 30 days.
22. There are no issues of reasonableness that prevent an order from being granted.

Decision

23. The Tribunal found that ground 12A has been established and granted an order in favour of the Applicant. The superseding of the extract is refused.

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.

Gabrielle Miller

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11th January 2024

Legal Member/Chair

Date