



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/23/0454

Re: Property at 2 Dundonald Crescent, Newton Mearns, G77 5TJ (“the Property”)

Parties:

Mrs Elizabeth Latter, Mr Ian Latter, 11 Gleneagles Drive, Newton Mearns, G77 5UA (“the Applicant”)

Mr Mark Shields, 2 Dundonald Crescent, Newton Mearns, G77 5TJ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

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 13th March 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 the Applicant wishing to sell the Property.
2. This case is conjoined with case reference FTS/HPC/CV/23/0451.
3. On 5th April 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 11th May 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 26th April 2023.

4. On 6th April 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 6th April 2023.
5. On 24th April 2023, the Applicant's solicitor emailed the Housing and Property Chamber to increase the amount sought to £4565 and attaching a rent account for the period 1st August 2022 to 12th April 2023.
6. On 26th April 2023, the Respondent emailed the Housing and Property Chamber requesting that the CMD be postponed as he was working on site and unable to attend the CMD.
7. On 4th May 2023, the Applicant's solicitor emailed opposing the granting of a postponement. The Applicant's solicitor noted that there was no specific reason why the postponement request was required.
8. On 5th May 2023, the Applicant's solicitor emailed amending the terms of the reasonableness test.
9. On 9th May 2023, all parties were emailed to the address that they had been corresponding with the Housing and Property Chamber to inform of CMD of 11th May 2023 being postponed. A request was made that all parties advise of their availability for the next two months in order that the CMD does not need to be postponed again.
10. On 25th May 2023, the Applicant's solicitor emailed the Housing and Property Chamber to ask if a date had been set for the next CMD.
11. On 13th July 2023, all parties were emailed to the address that they had been corresponding with the Housing and Property Chamber to inform of the new date of the CMD of 17th August 2023 at 10am by teleconferencing.
12. On 27th July 2023, the Applicant's solicitor emailed the Housing and Property Chamber requesting that the amount sought be increased to £4801.85 for the conjoined case. A rent account was attached for the period 1st August 2022 to 12th July 2023. A copy of a letter to the Respondent indicating the increase sought was attached. This letter to the Respondent had been intimated by first class post and recorded delivery. This letter included the date and the time of the CMD.
13. On 8th August 2023, the Respondent emailed the Housing and Property Chamber stating that he had left a voicemail the previous week regarding the letter from the Applicant's solicitor. It stated that he had not had notification regarding the date of the CMD and that the current ban on evictions had been extended to March 2024. This was from a different email address that the Respondent had used previously to email the Housing and Property Chamber.

14. On 14th August 2023, the Respondent emailed again with the reference number for the case.
15. On 15th August 2023, the Housing and Property Chamber emailed the Respondent asking which email address he preferred to be emailed at going forward.
16. On 15th August 2023, the Respondent emailed the Housing and Property Chamber stating that he was following up on this case.
17. On 16th August 2023, the Housing and Property Chamber emailed the Respondent to ask the Respondent to clarify why he was not able to attend the CMD. He was also asked to clarify when he stopped using the first email address and why he did not inform the Housing and Property Chamber that he had changed his email address. It was noted that the Tribunal would be very reluctant to postpone again without good reason.
18. On 17th August 2023 at 00.16am the Respondent emailed the Housing and Property Chamber stating that he could not attend the CMD (referred to by the Respondent as “the meeting”) due to commitments with his job and was unable to reschedule due to the lack of notice. He said that he could not attend without being prepared noting that he had only known for “a week or so”. He also noted that he had not stopped using his previous email address and has had all his emails forwarded from that email address to his current email address. He stated that he did not receive an email with notification of the date from the Housing and Property Chamber.
19. A CMD was held on 17th August 2023 at 10am by teleconferencing. The Applicant was represented by Ms Kirstie Donnelly, solicitor, TC Young solicitors. Ms Simone Callaghan, paralegal, TC Young Solicitors was present as an observer. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD. Ms Donnelly said that she objected to any postponement of the proceedings. She noted that the same reason had been given as before but that this judicial process was very accessible given that the CMD was by teleconferencing. Ms Donnelly considered that the Respondent had a duty to take steps to enquire about a CMD date if he had not heard as he had asked for the postponement. Regardless he had known about the CMD from at least 27th July 2023 when her firm had written to him regarding the amendment of the sum sought. She considered this plenty of time to prepare for the case and/or instruct a legal or lay representative. Ms Donnelly said that there has been no communication from the Respondent. The Respondent has not been addressing his ongoing rent charge which has caused the arrears to accrue. The increase of the rent charge was a 3% increase which is in line with current legislation. He was notified of the rent increase by an email sent by the letting agent on 7th April 2023. Ms Donnelly noted that the Respondent had not been communicating last year. The Applicant applied to the Housing and Property Chamber to gain entry to the Property. This had risen from the garden not being maintained. Ms Donnelly said that the Property was found to be

somewhat untidy and unkempt but not in a poor condition. The Applicant passed the Property in May 2023 and saw the Respondent attending to the garden. Ms Donnelly said that the Respondent is around 37 years old and lives in the Property with his wife and two children. He is in employment. Ms Donnelly said that the Applicant has two adult daughters who are looking to buy their own properties in Edinburgh and Aberdeen as they have undertaken employment in those cities. The Applicant had bought the Property with the intention to sell it after a few years for deposits for his daughter. When he had purchased the Property the ground 1 applications were mandatory. He had let out the Property on this basis. Since then the law has changed so that it is discretionary. The Respondent remaining in the Property limits the Applicants daughters ability to proceed with their purchases. It was noted by the Tribunal that this case is subject to the Cost of Living (Tenant Protection)(Scotland) Act 2022 which means that an order cannot be enforced for the eviction of the Respondent for 6 months. Ms Donnelly was aware of this and understood the implications of the Cost of Living (Tenant Protection)(Scotland) Act 2022.

20. On 31st August 2023, the Respondent emailed the Housing and Property Chamber to say that he wished to recall the order and the order in the conjoined case.
21. On 14th September 2023, the Tribunal allowed the recall. Notification of this was intimated to both parties.
22. On 27th November 2023, all parties were emailed to the address that they had been corresponding with the Housing and Property Chamber to inform of the new date of the CMD of 24th January 2024 at 10am by teleconferencing. The Respondent had been emailed to the email address which he had emailed from when requesting the recall.

The Case Management Discussion

23. A CMD was held on 24th January 2024 at 10am by teleconferencing. The Applicant was represented by Mrs Claire Mullen, solicitor, TC Young solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
24. Mrs Mullen said that the arrears have risen to £5052.92. The Respondent has paid £1395 on 14th August 2024, 12th October 2023, 13th November 2023, 12th December 2023 and 12th January 2024. This amount is less than the rent charge of £1436.85. The amount which the Respondent is paying is what the rent charge was before the 3% rent charge increase was applied. There has been no contact from the Respondent at all. Mrs Mullen has no reason to doubt that the Respondent is not still living in the Property.
25. Mrs Mullen said that the Applicant still wishes to sell the Property. It had been bought as an investment property for his two daughters. One daughter has moved to Aberdeen and had hoped to buy there. As this Property has not been able to be sold she has had to rent a property which is an extra financial cost.

The Applicant's other daughter has postponed her move to Edinburgh to prevent such cost. The continued failure to resolve the matter is causing them all considerable strain and may have further financial implications giving the rising cost of buying property for the daughters, though the Tribunal noted the value of the Property may also have risen.

26. The Tribunal noted that there has been no contact from the Respondent on his preferred email address since he lodged the recall request. The evidence remains as it was except that the arrears have accrued further. This is not a rent arrears case but this is noted as an issue of reasonableness. There is no explanation by the Respondent as to his position as he has not attended the CMD or communicated with the Applicant or his representative.

27. It was noted by the Tribunal that this case is subject to the Cost of Living (Tenant Protection)(Scotland) Act 2022 which means that an order cannot be enforced for the eviction before 31st March 2024. Ms Donnelly was aware of this and understood the implications of the Cost of Living (Tenant Protection)(Scotland) Act 2022.

Findings and reason for decision

28. A Private Rented Tenancy Agreement commenced 11th August 2020.

29. The Respondent persistently failed to pay his rent charge of £1436.85 per month. The rent payments are due to be paid on 11th day of each month. The charge was increased by 3% from £1395. The first payment of the increased rent was due to be paid on 11th July 2023. The Respondent was telephoned in advance by his letting agent and email with the notification of this rent increase on 7th April 2023. The arrears totalled £4801.85 at the last calling of the CMD in August 2023. The rent account has not been clear since October 2022. The Respondent has not paid the new increased rent amount in his August payment. The payment was due on 11th August 2023 but the Respondent paid the previous amount of £1395 and this pattern has continued for all other payments going forward. This has meant that the arrears have risen to £5052.92. This amount has not been intimated upon the Respondent so could not be increased for the purposes of the Tribunal granting an order for the conjoined case. There has been no contact from the Respondent with regard to paying the arrears. Though this case is not an eviction for rent arrears this demonstrates the Respondents lack of communication and lack of adhering to rent payments. It demonstrates that it would not be reasonable to the Applicant to refuse the granting of an order.

30. The Respondent was notified of the first CMD on 5th April 2023. It was stated in that letter that any representations were to be made by 26th April 2023. The Respondent has not lodged any representations regarding his position for either this case or the conjoined case. The Tribunal granted an adjournment of the CMD for 11th May 2023. The Respondent was notified of this postponement by email. The Respondent was notified of this CMD on 13th July 2023 to the same email address. He emailed the Housing and Property Chamber stating that he had not been aware of this CMD. The Tribunal has no evidence before it that

the email failed to be delivered. It is reasonable to presume that the Respondent has a responsibility to ensure that he is aware of any date. When he was written to it stated that he would need to inform of his availability. He failed to do this. It had the inference that the CMD would be in the next two months. The Applicant's solicitor had contacted two weeks after the postponement to query about a new date. It is not unreasonable that the Respondent could have done this at any point if he had thought that he had not been notified knowing that he had been asked of his availability within a two month period. It was reasonable for the Tribunal to presume that the Respondent received the email failing which that he should have contacted sooner to find out the date. The Respondent noted that he was aware on or around 27th July 2023 as that is when he received the Applicant's solicitor's letter. This was three weeks before the CMD. He did not email the Housing and Property Chamber until 8th August 2023. There was nothing substantially further in the papers save for the rent account which he received from the Applicant's solicitor. There was no explanation as to why he would not be able to prepare in that time as he had received the papers on 6th April 2023. Reference was made to the Respondent working. This was the same as had been the reason for the previous postponement. However, the Respondent was asked to specify exactly why he could not attend. He said that it was not possible to rearrange work commitments. This did not explain to the Tribunal what exactly were his commitments that he could not involve himself in the CMD given the importance of the CMD. The Tribunal has remitted powers from the Sheriff Court to deal with the matters in this Chamber. The Tribunal considered that all parties must take into account the gravity of these judicial proceedings. The CMD was conducted by teleconference which allows greater access to those attending. He did not explain why, even with the teleconferencing, that he would not be able to attend the CMD to address his view for this and the conjoined case. The Tribunal were not satisfied that adequate reasons were given to grant a postponement and that it would not have been reasonable to the Applicant to grant a further postponement for the request in August 2023. The Respondent then lodged a recall request on 31st August 2023 which was granted. Notification of this CMD was sent to the Respondent on the email address which he used to correspond to the Housing and Property Chamber when he made his recall request on 31st August 2023. He was sent the notification of this CMD on 27th November 2023. There has been no contact by the Respondent to the Housing and Property Chamber since he lodged the recall request on 31st August 2023. He has not made any representations nor has he appointed a representative.

31. There were no issues of reasonableness to prevent an order being granted.

Decision

32. The Tribunal found that ground 1 had been established and that there were no issues of reasonableness to prevent an order from being granted. The Tribunal granted the Order as sought in the application.

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.



24th January 2024

Legal Member/Chair

Date