



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/23/4046

Re: Property at 158 Croftside Avenue, Glasgow, G44 5ND (“the Property”)

Parties:

Mr Stephen Broadley, 6 Railway Road, Airdrie, ML6 9AB (“the Applicant”)

Ms Elizabeth Keenan and Morgan Keenan, 158 Croftside Avenue, Glasgow, G44 5ND (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in the absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 158 Croftside Avenue, Glasgow, G44 5ND under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is based on Ground 1A (Landlord intends to sell to alleviate financial hardship)

and Ground 12 (rent arrears) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement with a start date of 15 May 2019, a Notice to Leave and email to dated 16 August 2023, a rent increase notice dated 7 October 2021, a rent increase letter with email dated 2 September 2022, a rent statement, a letter dated 16 May 2023 from the Royal Bank of Scotland and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Glasgow City Council dated 11 November 2023.
3. On 23 January 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 11 March 2024. The Respondents required to lodge written submissions by 13 February 2024. This paperwork was served on the Respondents by Alan McLaughlin, Sheriff Officer, Glasgow on 24 January 2024 and the Executions of Service was received by the Tribunal administration.
4. The Applicant’s representative lodged various other letters from the Royal Bank of Scotland and a tax return on 31 January 2024. In response to a Notice of Direction the Applicant’s representative also lodged an up to date rent statement to February 2024 and letters dated 24 June, 6 July, 20 July and 3 August 2023 to the Respondents.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 11 March 2024 by way of teleconference. Mrs Kent from SBC Properties appeared for the Applicant. There was no appearance by or on behalf of the Respondents despite the CMD starting 5 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement with a start date of 15 May 2019, the Notice to Leave and email to dated 16 August 2023, the rent increase notice dated 7 October 2021, the rent increase letter with email dated 2 September 2022, the letter dated 16 May 2023 from the Royal Bank of Scotland, various other letters from the Royal Bank of Scotland, a tax return for the Applicant, letters to the Respondents dated 24 June, 6 July, 20 July and 3 August 2023, a rent statement to February 2024 and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Glasgow City Council dated 11 November 2023. The Tribunal noted the terms of these documents.
7. Mrs Kent moved the Tribunal to grant an Order for repossession. She submitted the Applicant needed to sell the Property and referred to the letter dated 16 May 2023 from the Royal Bank of Scotland. The Tribunal noted that

the sum outstanding to the Bank at the end of the terms of mortgage on 10 September 2023 was £85 374.74. The Tribunal also noted the other letters from the Bank in relation to loans over other properties which the Bank needed settled.

8. Mrs Kent further submitted that the rent arrears were continuing to increase. The monthly rent was £625. Universal Credit paid £528.49. The difference had not been made up by the Respondents since October 2022. The Tribunal noted arrears to February 2024 were £3575.84. The Tribunal also noted the Applicant's agent's letters dated 24 June, 6 July, 20 July and 3 August 2023 regarding the arrears. Mrs Kent explained the Respondents had both been in employment when the tenancy started. However they had lost their jobs. Mrs Kent was aware a lump sum had been paid for rent but that had not been paid in full towards the rent. She believed Morgan Keenan may have moved out but could not be certain. The Property was a 3 bedroomed property. She believed Elizabeth Keenan may live on her own. However her adult son may live with her. She was also uncertain whether her daughter had moved in with Elizabeth Keenan. The Tribunal noted the Notice to Leave relied on Ground 1A and Ground 12 of Schedule 3 of the 2016 Act. The Tribunal also noted that Clause 4 of the tenancy agreement between the parties allowed for service by way of email.

Findings in Fact

9. The Applicant and the Respondents entered into Private Residential Tenancy Agreement starting on 15 May 2019.
10. The Applicant owns the Property. He has an outstanding mortgage with the Royal Bank of Scotland. The mortgage expired on 10 September 2023 at which point the sum due to the Bank was £85 374.74. The Applicant needs to put the Property up for sale when he gains repossession to clear the mortgage and his indebtedness to the Royal Bank of Scotland.
11. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement that the Respondents would pay the Applicant a monthly rent for the Property of £595. The current rent is £625.
12. The Respondents have fallen into arrears of rent and are in breach of Clause 8 of the tenancy agreement. Arrears to February 2024 are £3575.84. The arrears have accrued for over three consecutive months and amount to more than one month's rent.
13. The Applicant's agent contacted the Respondents about the rent arrears by email and letter on 24 June, 6 July, 20 July and 3 August 2023.

14. There are no outstanding benefits issues that will have any impact on the arrears.
15. The Applicant's letting agent served a Notice to Leave on the Respondents by way of an email on 16 August 2023. The Notice to Leave required the Respondents to leave the Property by 11 November 2023. The Notice to Leave relied on Ground 1A and Ground 12 of Schedule 3 to the 2016 Act.
16. The Applicant's letting agent served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 11 November 2023.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support.
18. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1A, namely the Landlord intends to sell the Property to alleviate financial hardship and on Ground 12 namely that there are three consecutive months of rent arrears. These are discretionary grounds of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
19. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
20. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property to alleviate financial hardship and that there are rent arrears at Part 2 of the Notice in terms of Grounds 1A and 12 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 11 November 2023. The Notice to Leave was served on the Respondents by email on 16 August 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 11 November 2023. In the circumstances the Tribunal is satisfied the Respondents have been given sufficient notice of 84 days. Accordingly, the Notice to Leave complies with Section 62.

21. The Tribunal considered the submissions made by Mrs Kent. The Tribunal considered the Respondents had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mrs Kent, that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as he regained possession. The Tribunal was also satisfied arrears were increasing.
22. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when he obtained possession to clear the mortgage on the Property. The Respondents had not made any recent effort to clear the arrears and although the arrears were relatively small compared to the Applicant's overall indebtedness to the Bank, the Respondents could not expect the Applicant to continue to bear the cost of increasing arrears. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
23. In the circumstances the Tribunal considered that in terms of Ground 1A and Ground 12 of Schedule 3 it was reasonable to grant an eviction order under Section 51 of the 2016 Act.

Decision

24. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

11 March 2024

Legal Member

Date