



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/3850

Re: Property at 141 High Street, Burntisland, KY3 9AE (“the Property”)

Parties:

L & M Properties, L & M Properties, 57 Old Kirk Road, Dunfermline, KY12 7SQ (“the Applicant”)

Mr John Campbell or Hume, 141 High Street, Burntisland, KY3 9AE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ahsan Khan (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. Applications were received by the Housing and Property Chamber dated 31st October 2023 and 11th January 2024. The applications were submitted under Rule 65 and Rule 66 respectively of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”).
2. On 25th March 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 2nd May 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 15th April 2024.
3. On 25th March 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 25th March 2024.

The Case Management Discussion

4. A CMD was held on 2nd May 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Graham Reid, Solicitor, Charles Wood & Son Solicitors. The Respondent was present and represented himself.
5. The Respondent said that he had accrued rent arrears. He has had issues with his housing benefit. The issue is that he no longer is known as Mr John Campbell but as Mr John Hume. He changed his name back to his birth name as he did not want to be associated with the name Campbell for personal reasons concerning a family member. This has caused him some issues as he has been told that he cannot get Housing Benefit because his name is Hume but the tenancy is in the name of Campbell. Mr Hume has contacted the Applicants to request that he have a new lease in the name of Hume but this has not been forthcoming. The Respondent has sought advice from Citizens Advice Bureau and Frontline Scotland in terms of his lease. He said they advised that he had an “illegal lease”. The Tribunal tried to determine whether he had shown the lease dated 8th August 2022 (a continuation of the existing lease) to Citizens Advice Bureau as they may have raised that new short assured tenancies could not be created after 1st of December 2017. The respondent could not confirm the grounds on which the agency considered the agreement “illegal”.
6. The Respondent was very concerned that he wants to pay his outstanding arrears but has no means to do so until his Housing Benefit is in place. He has been told by the local authority that he cannot be put on their housing list as his name is not the same as on his lease. The Tribunal noted that he will need to contact the local authority homeless department and explain this should an order be granted.
7. The Respondent said that he is not opposing an order being granted. He is now looking to move from this property and be settled in a new local authority property. He also noted that he is getting advice in terms of bankruptcy. Mr Reid informed the Tribunal that there has been a previous case against the Respondent for rent arrears where an award was made of £3450. The Respondent told the Tribunal that the arrears currently stand at £6500. The Respondent said that he does want to address his arrears but needs the least to be amended into his legal name in order to be able to do that.
8. The Tribunal noted the absence of evidence of compliance with pre-action protocols regarding rent arrears. The Respondent however told the Tribunal that he had taken advice as noted above. He had contacted his landlord to advise of the reason for the arrears. He had done this in advance of them sending out the relevant pre-action requirement letters. It was therefore clear to the Tribunal that the absence of pre-action protocol letters was not prejudicial to the Respondent. He was aware of his arrears and his rights and had taken appropriate independent advice.

9. The original action was brought under Rule 65 and a further application was submitted under Rule 66. Whilst Mr Reid's clients had asserted that the Respondent moved into the property on 8 February 2016, the Respondent stated that he moved in on 3rd July 2017, the date on the lease and the AT5 submitted by the Applicants. The Tribunal noted that the AT5 was signed by Mr Hume on 10/7/2017. Mr Reid suggested that given that the landlord had signed it on 30th June 2017 it could be considered that the AT5 was signed at the same time as the lease. The Tribunal however was not satisfied that it was established that the AT5 had been signed before the tenancy agreement.
10. Mr Reid stated he was content to proceed under Rule 65. The Tribunal was satisfied that a valid AT6 had been served, and that ground 8A had been established.

Findings and reason for decision

11. The parties entered into a lease on 3rd July 2017. The rent payments of £350 are due on the last day of each month.
12. The Respondent persistently failed to pay his rent charge of £350 per month. The current arrears are on or around £6500.
13. There are issues that need to be addressed by Housing Benefit but this cannot be done until further advice is sought by the Respondent. It may not be possible for the Respondent to claim back the full amount of arrears from Housing Benefit.
14. The Respondent has sought advice from Citizens Advice Bureau and Frontline in Scotland. There is also an order against the respondent for outstanding sums due amounting to £3450. The consequences of non-payment would have been discussed in this case. The Respondent was clear of his duties in terms of payments and had discussed these with the applicant.
15. The Respondent is not opposing an order being granted.
16. The Tribunal did not find there were issues of reasonableness to prevent an order being granted.

Decision

17. The Tribunal found that ground 8A has been established and granted an order in favour of the Applicant. The Applicant is entitled to an Order for recovery of possession.

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.

G. Miller

2nd May 2024

Legal Member/Chair

Date