



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/4509

Re: Property at 2C ABBOT STREET, PERTH, PH2 0EB (“the Property”)

Parties:

Mrs KAREN FORBES, Mr MARK FORBES, 91/7 Constitution Street, Edinburgh, EH6 7AY (“the Applicant”)

MR JOHN HAYBURN, 2c ABBOT STREET, PERTH, PH2 0EB (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”), which took place by telephone conference on 3 June 2024, the Applicants were not in attendance but were represented by Mrs Sally McCartney of Kippen Campbell LLP, Solicitors, Perth. The Respondent was present.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/EV/23/4408.

Prior to the CMD the Tribunal had received from the Applicants’ representative:-

- i. An email dated 30 April 2024 with an application to amend the application to increase the sum claimed to £4,089.04; and
- ii. Written Submissions by email dated 29 May 2024.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 27 August 2020.

- ii. The rent payable in terms of the PRT is £500 per calendar month payable in advance on the 27th day of each month.
- iii. As at the date of the application the rent arrears were £1,589.04.

The CMD

At the CMD Mrs McCartney for the Applicants made the following representations in respect of this application and the associated application FTS/HPC/EV/23/4408:-

- i. The deposit previously paid by the Respondent in terms of the PRT is still held.
- ii. The Respondent remains in occupation of the Property.
- iii. The Property is a 2 bedroomed flat with hallway, lounge, kitchen and bathroom.
- iv. The Applicants previously owned and rented out 6 properties. They were all running at a loss. They had sold 4 of the properties at the time this application was made. One other property is on the market and the Property is the final one to be sold.
- v. In relation to the Property the Applicants are sustaining a loss of £4,700 per annum due to high mortgage interest rates and tax on rental income.
- vi. The loss is exacerbated by the Respondent not having paid rent since August 2023.
- vii. The mortgage over the Property is with Bristol & West.
- viii. The rent has never been increased.
- ix. The Applicants are not working so cannot refinance the Property.
- x. The only option open to the Applicants is to remove the Respondent and sell the Property.
- xi. The rent arrears balance as at the CMD is £4,589.04.
- xii. The Applicants seek a payment order.

At the CMD the Respondent made the following representations in respect of this application and the associated application FTS/HPC/EV/23/4408:-

- i. The Respondent is almost 55 years of age and lives alone.
- ii. He lost his job last year and his health has gone downhill.
- iii. He became completely unemployed in August 2023. He had some redundancy money.
- iv. His credit rating is not good.
- v. He could not find anywhere else to live.
- vi. He applied to Perth & Kinross Council for housing. He made the Council aware of his health issues. Whilst initially told he would be eligible for housing he was quickly told he was not eligible due to the rent arrears accrued relative to his tenancy of the Property. He is "caught between a rock and a hard place".
- vii. He cannot find a private let.
- viii. The Respondent has asthma. The doctor has advised that his heart is also not working properly to get enough air into his lungs. He has mobility issues due to problems with his legs and he is on crutches. He does not get out much.
- ix. He has no objection to an eviction order being granted but has nowhere else to go.
- x. He accepts the rent arrears to have accrued to £4,589.04.
- xi. Under questioning from the tribunal about why he had not applied for housing benefit or other state benefits to which he might be entitled the Respondent said that he wanted to get himself back on his feet and didn't want to accept "handouts".
- xii. The Respondent's Mum has dementia and lives in a care home in Perth.

Mrs McCartney thereafter made further representations for the Applicants as follows:-

- i. The Respondent has had opportunities to get Government assistance relative to his rent but has chosen not to do so.
- ii. That decision has had a detrimental effect on the Respondent and also on the Applicants as no rent has been paid since August 2023.
- iii. The granting of an eviction order will assist the Respondent in securing alternative accommodation as the Council has an obligation to house him.

Findings in Fact

- i. The Applicants leased the Property to the Respondent in terms of the PRT.
- ii. The PRT commenced on 27 August 2020.
- iii. The rent payable in terms of the PRT is £500 per calendar month payable in advance on the 27th day of each month.
- iv. The Respondent has failed to pay rent in terms of the PRT.
- v. The rent arrears balance as at the CMD is £4,589.04.

Reasons for Decision

The factual background is not in dispute between the parties.

The Respondent accepted the rent arrears stated to be due.

Decision

The Tribunal:-

- i. Allows the application to be amended in terms of Rule 14A of the First-tier Tribunal for Scotland Housing & Property Chamber Rules of Procedure 2017 by increasing the sum claimed to £4,089.04; and
- ii. Thereafter makes a payment order against the Respondent in favour of the Applicants in a sum of £4,089.04.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gillian Buchanan

Legal Member/Chair



3 June 2024
Date