



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/23/2640

Re: Property at Flat E, 20 Pitmedden Crescent, ABERDEEN, AB10 7HQ (“the Property”)

Parties:

Mr Sean Allan, 20 Ashvale Drive, Westhill, AB32 6LP (“the Applicant”)

Mr Nnadika Chigozie Ehziem, Flat E, 20 Pitmedden Crescent, ABERDEEN, AB10 7HQ (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be granted relative to the Property.

- Background

By application dated 4 August 2023, the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act) seeking an Eviction order under Ground 12. Following that, the Applicant lodged a fresh application dated 10 October 2023 seeking an Eviction Order under Ground 12 and Ground 12A (the Application). With the Application, the Applicant lodged the following:

- 1) Copy Lease;
- 2) Copy Notice to Leave along with copy intimation email;
- 3) Section 11 Notice;
- 4) Copy rent statement;
- 5) Copy letters issued under the Pre-action Requirements (PARs)

A Case Management Discussion (CMD) was held on 25 January 2024 at which the Applicant was represented by a Mr Winchester (letting agent) and the Respondent appeared personally. At that CMD, the Tribunal allowed Ground 12A to be used as a ground for possession despite it not being included in the Notice to Leave and the Tribunal found that the Applicant “had established grounds for an eviction order to be granted due to non-payment of rent” and that the only remaining issue was “the reasonableness of granting the application”. Thereafter the Tribunal continued the CMD to obtain further information relating to the Respondent’s (and his wife’s) employment status from February 2024 onwards and to obtain further information regarding the Applicant’s finance for the Property. A fresh CMD was thereafter fixed for 2 May 2024 and a Direction dated 30 January 2024 was issued requiring both parties to submit further information by 29 February 2024. The Applicant complied with that Direction, but the Respondent did not. Prior to the CMD on 2 May 2024, the Applicant’s representative lodged an UpToDate rent statement showing increased arrears of £5,400 as at 1 March 2024 as well as information on the finance the Applicant had over the Property. In addition, the Applicant submitted written submissions on the question of reasonableness.

- The Case Management Discussion

At the CMD on 2 May 2024 the Applicant was again represented by Mr Winchester and the Respondent again appeared and represented himself. Both parties acknowledged that they had received the written note of the previous CMD and the Direction issued. Both parties confirmed that the CMD note was correct and that it accurately stated the discussions on 25 January 2024. The Respondent acknowledged that he had not complied with the Direction (which required production of evidence of his and his wife’s employment status) because he had not been able to secure employment despite his best efforts. In short, he felt he had nothing he could send. Mr Winchester then stated that the arrears had increased further and, as at 1 May 2024, stood at £6,600 and that there had been no payment from the Respondent since 19 January 2024. The Respondent confirmed that this was correct, and the level of the arrears was not in dispute.

Mr Winchester confirmed that the Applicant was seeking an Eviction order due to the size of the arrears and the fact that the Applicant was “subsidising” the Respondent’s occupation of the Property to the extent of £648 per month (which was the current mortgage cost) and that with no money coming in, he could not afford to do that any longer. That the non-payment by the Respondent was causing the Applicant significant financial difficulties. There were further concerns in that, although the Respondent’s wife was working, she was not a tenant and could therefore not be pursued for any arrears of rent, only the Respondent, who was not in employment.

The Respondent confirmed that he was not in employment but had tried unsuccessfully to gain employment. He indicated that had recently started a “Level 3” Diploma in Health and Social Care which he stated would assist him in finding employment in the “Care Sector” within “2 weeks” and that he knew there were jobs available in that sector. He also indicated that due to changes in the availability of work, his wife’s income had dropped considerably to less than £700 per month, but it was hoped that this would change soon. He stated that he was therefore not in a position to make any proposals in relation to clearing arrears, nor was he in a position

to confirm that the monthly rent would be met. He also stated that, due to his period of residency in the United Kingdom, he was not yet eligible for any state benefits that may assist. He stated that he was “guilty by the book” but that he was certain he would secure employment and that he would thereafter clear the arrears. He confirmed that he still resided at the Property with his wife and their 2 children aged 10 and 12 years. There was no suggestion of any health issues.

- Findings in Fact

- 1) That the Applicant is the heritable proprietor of the Property.
- 2) That the Applicant and Respondent, entered into a tenancy for the Property which commenced on 19 October 2021.
- 3) The monthly rent was £600.
- 4) That on or around 10 May 2023, the Respondent was in arrears of rent to the extent of £3,000.
- 5) By Notice to Leave dated 10 May 2023 intimated by way of email the Applicant gave notice to the Respondents of his intention to recover possession of the Property in terms of Ground 12 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 10 June 2023.
- 6) That as at 25 January 2024 the arrears of rent were £4,200.
- 7) That as at 1 May 2024, the arrears of rent are £6,600 and no payment towards rent has been made since 19 January 2024.
- 8) That the Applicant has a loan secured over the Property and has current monthly payments of £648.20.
- 9) That the Applicant has issued correspondence under the Pre-action Requirements dated 9 May 2023 and 9 June 2023 along with other correspondence regarding the arrears.
- 10) That the Respondent is not in employment.
- 11) That the Respondent is undergoing further training but has not secured any future employment.
- 12) That the Respondent lives in the Property with his wife and 2 children aged 10 and 12 years.
- 13) That the Respondent’s children attend school locally to the Property.
- 14) That the arrears have not accrued as a result of any failure or delays in the payment of benefits.
- 15) That previous payment proposals made by the Respondent had not been adhered to.

- Reasons for Decision

The Applicant has complied with the notice requirements under the 2016 Act and the PARs applicable to rent arrears recoveries. The arrears are not in dispute and both Grounds 12 and 12A were therefore established. There were no disputes as to any applicable facts and the issue for the Tribunal was therefore, in the circumstances, was it reasonable to evict the Respondent. The Tribunal considered the circumstances as put before them by the parties. It was acknowledged that the Respondent had lived at the Property since October 2021 and wanted to stay there and that his young children were schooled locally. It was also acknowledged that the Respondent appeared to be genuine and sincere in his desire to secure employment

