



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/0063

Re: Property at 10 Pollock Crescent, Kilwinning, KA13 6HW (“the Property”)

Parties:

Mr Stephen Cassidy, Mrs Angela Cassidy, 44 Park Circus, Ayr, KA7 2DL (“the Applicants”)

Miss Susan Cooper, 10 Pollock Crescent, Kilwinning, KA13 6HW (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property but that enforcement of the order should be suspended for a period of three months.

Background

1. By application dated 8 January 2024 the Applicants’ representatives, Glow Homes Letting & Sales Ltd, Saltcoats, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave with proof of sending, Section 11 Notice with proof of sending, draft contract from Estate Agents, rent statement, together with other documents in support of the application.
2. By Notice of Acceptance dated 21 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 12 June 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 17 July 2024. The Applicants did not attend but were represented by Miss Robin Cambridge from the Applicants' representatives. The Respondent did not attend but was represented by her son Mr Christopher Stillie. Miss Cambridge confirmed that Mr Stillie had previously been in contact with her, representing his mother, and she had no objections to him representing the Respondent at the CMD.
5. The parties were in agreement that the Respondent had commenced her tenancy of the property on 12 February 2020 at a rent of £450.00 per calendar month and that the rent had increased to £463.50 per month with effect from 12 July 2023.
6. Mr Stillie agreed that the Respondent had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act by email on 4 September 2023 although the Respondent had not initially seen the email or understood its significance. Mr Stillie went on to say that he had subsequently made applications on his mother's behalf for other private rentals without success and towards the end of 2023 had applied to the Local Authority for housing but said that the Respondent had insufficient points but he had not been aware of this until five or six weeks previously.
7. The Tribunal noted that the Applicants' representatives had sent a Section 11 Notice to North Ayrshire Council by email on 8 January 2024.
8. The Tribunal also noted that although the Applicants intended to sell the property, they had not signed the contract with their representatives as they were waiting until they obtained vacant possession of the property.
9. Miss Cambridge advised the Tribunal that the rent arrears due by the Respondent had risen from £2367.66 as at the date of the application to £3091.00 at the date of the CMD.
10. Mr Stillie explained that the Respondent had previously been in receipt of PIP but that this had been stopped but that he intended to make a fresh application as the Respondent was disabled and had limited use of her left hand. Mr Stillie also explained that the Respondent had severe mental health issues and found it very difficult to leave her home which made attending meetings very difficult. He said that his mother's home was her safe zone and he hoped that the Tribunal would not grant the order for her eviction as at present she had nowhere to go and an order would affect her mental health. Mr Stillie said that although a meeting with North Ayrshire Council was scheduled to take place next week the local authority would not be able to rehouse his mother

immediately. Mr Stillie went on to say there had been an issue earlier in the year with regards to his mother's identity and it had been necessary to obtain a duplicate birth certificate and this had only been sent to the Local Authority a few weeks ago.

11. In response to a query from the Tribunal Mr Stillie confirmed that the local Authority was aware of the application calling today and said that previous meetings with his mother and the housing department had been cancelled on two occasions as his mother had suffered panic attacks on both occasions and had been unable to leave the property. He said that arrangements had been made to have a meeting next week at an office local to the property and he hoped that his mother would be able to attend. As it was not possible for the housing officer to carry out a home visit.
12. When asked if the granting of an eviction order would assist the Respondent in being rehoused Mr Stillie said that being served with the Notice to Leave had already given the Respondent the maximum number of points available.
13. Mr Stillie went on to say that the Respondent in addition to being disabled with damage to her left hand following an accident that had severed the tendons his mother had struggled with her mental health for a long time but it had worsened in the last two years and now she could barely walk to the end of the street and back as a result of severe anxiety at the thought of leaving the house.
14. Mr Stillie confirmed that the Respondent lived on her own although she did have a partner who visited her and would sometimes stay over. He confirmed the property was a two-bedroom flat.
15. For the Applicants, Miss Cambridge advised the Tribunal that the Applicants were both retired and were growing older and were not in good health. She said the Applicants had sold off a lot of other properties in their portfolio of properties as they no longer felt able to continue being landlords. Miss Cambridge explained that previously the Applicants family had assisted them with the properties but they had moved away from the area and the Applicants were now on their own and looking after the properties was getting on top of them. Miss Cambridge went on to say that the Respondent had always had her housing benefit of £345.20 paid direct to her firm but that the Respondent's rent account was never clear as the Respondent had been unable to meet the top-up payments required to meet the rent. Miss Cambridge said that Mr Stillie had tried to help with payments at times but he had his own costs to meet. Miss Cambridge also said that the Respondent had been directed to apply for assistance from a local charity, CHAP but perhaps because this would have meant having a face-to-face meeting had not proved successful. Miss Cambridge also said that an application for a rent arrears payment had also been rejected following a change in the Respondent's benefits.
16. Miss Cambridge said that she and the Applicants were aware of the Respondent's situation and that it was difficult for her. She said her firm had been contacted by some private landlords and she had to say that the

Respondent was in arrears of rent and that would have prevented private lets going ahead. Miss Cambridge also said that she had completed a form sent from North Ayrshire Council and was aware that the Respondent had restricted her choice of properties to Kilwinning and that this would make it more difficult for the local authority to find a suitable property for the Respondent.

17. Mr Stillie advised the Tribunal that the Respondent had now extended the areas to which she was prepared to be rehoused.

Findings in Fact

18. The Respondent commenced a Private Residential Tenancy of the property on 12 February 2020 at a rent of £450.00 per calendar month.

19. The rent was increased on 12 July 2023 to £463.50 per calendar month.

20. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 4 September 2023.

21. A Section 11 Notice was sent to North Ayrshire Council on 8 January 2024.

22. The Applicants intend to instruct Glow Homes Letting & Sales Ltd to market the property once vacant possession is obtained. to market the property for sale.

23. The Applicants are elderly, have retired, suffer from ill health and are in the process of selling their portfolio of let properties.

24. The Applicants' family have moved away from the area and can no longer assist the Applicants with their properties.

25. The Respondent has accrued rent arrears amounting to £3091.00 as at the date of the CMD.

26. The Respondent lives in the property on her own and is sometimes visited by her partner and her son.

27. The Respondent suffered an injury to her hand which has left her partially disabled with limited use of her left hand.

28. The Respondent was previously in receipt of PIP but no longer receives that benefit.

29. The Respondent's son intends to assist the Respondent with a further application for PIP.

30. The Respondent suffers from serious mental health issues which make it difficult for her to leave her home due to anxiety and panic attacks.

31. The Respondent has tried to obtain private lets in the Kilwinning area without success.
32. The Respondent has applied to North Ayrshire Council for housing and her application has not yet progressed.
33. The Respondent failed to attend two meetings with the local authority housing department due to suffering from panic attacks.
34. The Respondent and her son have a further meeting arranged with the local authority in the near future at an office close to the Respondent's home.
35. The Respondent has no means of clearing the accrued rent arrears in the near future and it is likely these will continue to rise.

Reasons for Decision

36. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties' representatives that the parties entered into a Private Residential tenancy that commenced on 12 February 2020. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to North Ayrshire Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicants representatives' oral submissions that they intend to market the property for sale once they obtain vacant possession.
37. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal was also satisfied that it had sufficient information before it to allow it to make a decision without the need for a hearing. The Tribunal therefore had to balance the needs of the Applicants with the needs of the Respondent in arriving at a decision. The Tribunal recognised that this was not a straightforward decision to make. On the one hand there were the Applicants who were elderly, had retired and due to ill health felt they were no longer able to manage their portfolio of properties and were in the process of disposing of them. The Applicants could no longer rely on their family to assist them with their properties as they had moved away from the area. Furthermore, the arrears of rent continued to rise and were now the equivalent of more than six months' rent. On the other hand, it was apparent that the Respondent had quite serious mental health issues that affected her day-to-day life and made it difficult for her to leave her home to attend meetings as she was likely to suffer from anxiety and panic attacks. The Respondent also suffered from some disability in her left hand that limited its use. To her credit the Respondent with the assistance of her son had since the end of 2023 tried to find other accommodation through both private lets and through the local authority. The difficulty for the Respondent would seem that having fallen into

substantial arrears of rent, private landlords may be unwilling to accept the Respondent as a tenant and her application for local authority housing has not progressed partly through some difficulty in proving her identity and partly through missing appointments due to having panic attacks.

38. In reaching its decision the Tribunal acknowledges that both parties have significant arguments in their favour but on balance the Tribunal considers that it is appropriate to grant the order sought by the Applicants. In doing so the Tribunal has fully taken account of the difficult situation that the Respondent is in given her serious mental health issues. The Tribunal accepts that the Respondent may well consider the property to be her home and her “safe place” however as has been pointed out the Respondent has been making efforts albeit unsuccessfully so far to obtain alternative accommodation and although the local authority has not yet progressed the Respondent’s application for housing it is likely that once an order for eviction is granted the local authority will take steps to find suitable accommodation for the Respondent given her obvious needs. The Tribunal did not consider it would be appropriate to refuse the application given the difficulties being experienced by the Applicants with regards to their age and health and lack of family support and with the rent arrears continuing to increase at the rate of almost £120.00 per month. However, in granting the application the Tribunal did consider that it would be appropriate to suspend the coming into force the order for a period of three months to give the Respondent sufficient time to progress her application for housing with the local authority and for the local authority to find suitable accommodation for the Respondent.

Decision

39. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property suspended for a period of three months.

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.

Graham Harding

17 July 2024

Legal Member/Chair

Date