



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/23/4318

Re: Property at 18 Morgan Street, Hamilton, ML3 6RJ (“the Property”)

Parties:

Mr Kevin McCauley, 2 Morven Drive, Motherwell, ML1 2TT (“the Applicant”)

Mr Craig Hawkes, 18 Morgan Street, Hamilton, ML3 6RJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (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.

Background

1. By application dated 30 November 2023 but sent to the Tribunal on 1 December 2023 the Applicant’s representatives Hemmings Homes, applied to the Tribunal for an order for the eviction of the Respondent from the property under ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave, Pre-Action requirement letters, rent statements, and a Section 11 Notice and email in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant’s representatives by Notice of Acceptance dated 14 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 7 June 2024.

4. By email dated 7 June 2024 the Applicant's representatives advised the Tribunal that the rent due by the Respondent had increased to £4367.43 and that rent of £375.00 was being paid by Universal Credit.

The Case Management Discussion

5. A CMD was held by teleconference on 10 July 2024. The Applicant did not attend but was represented by Miss Suzie Hemphill from the Applicant's representatives. The Respondent attended in person.
6. After explaining to the parties the purpose of the CMD the legal member ascertained that it was agreed that the parties entered into a Private Residential Tenancy that commenced on 1 June 2023 at a rent of £650.00 per calendar month. It was also agreed that the Respondent had fallen into arrears in August 2023 and had been personally served with a Notice to Leave during an inspection of the property on 2 November 2023. The respondent confirmed he had emailed the Applicant's representatives on 9 November 2023 asking the Applicant to rescind the Notice.
7. The Tribunal noted that the date of signing the Notice to Leave was incorrect as it was dated 30/11 2023. Miss Hemphill confirmed it should have been dated 30/10/2023 and this was her error but she maintained the Notice was still valid having been personally served on 2 November 2023 and this was accepted by the Respondent. The Tribunal noted that in terms of Section 73(2)(d) of the 2016 Act an error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
8. The Respondent acknowledged that arrears would continue to build until he was in a position to start to pay them back once he found employment. He explained that he had been employed at the commencement of the tenancy but had been paid off and since then although he had 12 years of experience as a web developer and graphic designer had been unable to find another job. When in employment he had earned £32000 per year. The Respondent said he had been given interviews but had not yet secured employment and had a further interview the following day. The Respondent also explained that he had contact with his two-year-old son who was autistic and non-verbal from a Friday morning to a Monday lunchtime and as his son lived with his mother five minutes away it was important to him to remain living locally.
9. For the Applicant, Miss Hemphill explained that the Applicant was a family man who was very anxious about the proceedings and was suffering from financial difficulties as a result of the non-payment of rent by the Respondent. Miss Hemphill said this was causing the Applicant stress and he was very apprehensive about the outcome should the order not be granted. Miss Hemphill explained that the Applicant was not a professional landlord and only had one rental property. She said he now wished to recover the property and

sell it to recoup his losses. Miss Hemphill was unaware of the monthly cost of the Applicant's mortgage, only that the Applicant was funding it himself.

10. The Respondent in response to further questions from the Tribunal said he had not yet made a homeless application to the local authority and was waiting on the outcome of the CMD. He also confirmed he was not in a position to borrow any money from family to clear the arrears.
11. In response to a further query from the Tribunal Miss Hemphill said that there had been difficulties in obtaining access to the property for an inspection and carrying out safety checks although the Respondent said that access would be granted at any time.
12. Both Miss Hemphill and the Respondent confirmed that they accepted the other party's position and that no facts were disputed.
13. Miss Hemphill submitted that the tribunal should grant the order sought.

Findings in Fact

14. The parties entered into a Private Residential Tenancy that commenced on 1 June 2023 at a rent of £650.00 per calendar month.
15. The Respondent fell into arrears of rent in about August 2023.
16. The Respondent was sent pre-action requirement letters on 31 August, 19 September and 12 October 2023.
17. The Respondent was personally served with a Notice to Leave on 2 November 2023.
18. At the date of service of the Notice to Leave the Respondent owed rent of £2563.13.
19. The Applicant's representatives sent a Section 11 Notice to South Lanarkshire Council on 30 November 2023.
20. At the date of the CMD the Respondent owed rent of £4367.43.
21. The Respondent is in receipt of Universal Credit and the Applicant is receiving rent currently in the sum of £375.00 per month.
22. The Respondent is unemployed but actively seeking employment as a web developer and graphic designer.
23. The Respondent has residential contact with his two-year-old son every week from a Friday morning until Monday lunchtime.

24. The Respondent's son is non-verbal and autistic.
25. The Respondent's son lives with his mother within five minutes from the property.
26. The Respondent has not yet applied for homeless accommodation.
27. The Respondent has no current means of paying the outstanding arrears until he obtains employment.
28. The Applicant has one rental property.
29. The Applicant is suffering financially from the lack of rent and is paying a mortgage on the property.
30. The Applicant is stressed and anxious as a result of the Respondent failing to pay rent.
31. The Applicant wishes to recover the property in order to sell it as he no longer wishes to be a landlord.

Reasons for Decision

32. The Tribunal was satisfied from the written representations together with the documents produced and the oral submissions of Miss Hemphill and the Respondent that the parties entered into a Private Residential Tenancy that commenced on 1 June 2023 at a rent of £650.00 per calendar month.
33. The Tribunal was also satisfied that the Respondent had fallen into arrears of rent and had been sent appropriate pre-action requirement letters. Although the Tribunal had concerns about the date on the Notice to Leave the Tribunal accepted that the error did not materially affect the effect of the document and in terms of Section 73(2)(d) of the 2016 Act was satisfied that the Notice to Leave was valid and that it had been personally served on the Respondent on 2 November 2023 and the Respondent had confirmed this to be the case.
34. The Tribunal was also satisfied that at the date of the CMD the rent owed by the Respondent had risen to £4367.43 and although the Respondent was in receipt of Universal Credit the arrears were continuing to increase. The Tribunal was therefore satisfied that subject to it being reasonable the grounds for granting an order under Ground 12 of Schedule 3 of the 2016A ct had been met.
35. In reaching its decision the Tribunal acknowledged that the parties did not dispute the facts as presented to the Tribunal. The Tribunal was also satisfied that it had sufficient information before it to make a decision without the need for a hearing. The Tribunal accepted that the Respondent's failure to pay rent had come about as a result of him losing his job and being unable to find new employment to date. It also acknowledged that as long as the Respondent was

in receipt of Universal Credit the rent arrears would continue to increase. The Tribunal noted that the Respondent had the care of his two-year-old autistic son for three nights each week and if he were to be evicted from the property that would have an adverse effect on both the Respondent and his son particularly if the Respondent had to travel a much greater distance to exercise contact or if as a result of being made homeless he could not find suitable accommodation for his son.

36. The Tribunal also noted that the Applicant was struggling financially as a result of the Respondent running up very substantial arrears particularly when the Applicant had to meet the mortgage cost on the property. The Tribunal noted the Applicant was not a professional landlord and only had one let property. The Tribunal accepted that this had resulted in the Applicant suffering from stress and anxiety and wishing to recover the property in order to sell it and try to recoup his losses.

37. The Tribunal was required to balance the circumstances of both parties in reaching its decision. In doing so it concluded that it would not be appropriate to allow the Respondent to continue to increase the amount of arrears indefinitely by refusing the order sought. However, given that the Respondent was actively seeking employment the Tribunal considered that it would be fair to the Respondent and not too prejudicial to the Applicant if the order was granted to suspend the timing of the order coming into force for a period of two months to see if the Respondent is able to find employment which might allow him to find suitable alternative accommodation for himself and his son and also to make a homeless application.

Decision

38. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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
Legal Member/Chair

10 July 2024
Date

G Harding