



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/23/2458

Re: Property at 62 G/F Kinghorne Road, Dundee, DD3 6PU (“the Property”)

Parties:

Bonbell Properties Limited, 112 Lorne Street, Dundee, DD2 3HF (“the Applicant”)

Ms Karen Butchart, 62 G/F Kinghorne Road, Dundee, DD3 6PU (“the Respondent”)

Tribunal Member:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The Tribunal refused the application for an eviction order in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) 2016 the Tribunal having considered that it was not reasonable to grant an order.

The decision of the Tribunal was unanimous

Background

1.This application for an eviction order in terms of Rule 109 of the tribunal rules of procedure was first lodged with the tribunal on 24th July 2023 and accepted by the tribunal on 5th September 2023. A case management discussion was first fixed for 24th November 2023 at 2:00 pm.

Case Management Discussion

2.The case management discussion was attended by Mr Paul Letney of Pavilion Properties who represented the Applicant who was not present. The Respondent attended and represented herself.

3. The tribunal initially had sight of the application, a tenancy agreement, a rent statement, a notice to leave, and the e-mail intimating the notice to leave, a notice in terms of section 11 of the Homelessness etc Scotland act 2003 and an e-mail sending this to Dundee City Council.

4.The parties had entered into a tenancy agreement at the property with effect from 1st July 2022 with monthly rent payable of £500. Rent arrears had accrued from early in the tenancy and had continued to rise.

5.The Applicant had served a Notice to Leave on the Respondent dated 10th April 2023 setting out that the Respondent was in rent arrears over 3 consecutive months and giving notice that an application would not be made to the Tribunal before 12th May 2023. The Notice to Leave had been sent by email to the Respondent on 10th April 2023.

6.A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Dundee City Council in relation to this application on 13th June 2023.

7.For the applicant Mr Letney explained that the rent had not been paid for some months and the arrears as of the date of the case management discussion amounted to £5260. There had been previous attempts to agree a payment plan towards the arrears but realistic terms for payment of the arrears had not been offered and the landlord felt that they were now a position where they required to seek to recover the property. Mr Letney said that they were not confident that any plan towards payment of the arrears could be sustained by the Respondent.

8. Ms Butchart explained that she is an agency mental health worker and works as a nursing assistant. She herself has had issues with her health and had been off work. She said that Hannah at Pavilion Properties knew of her situation. She had lived in the property since 2014 and accepted that she had not paid the rent for the last few months. She said that she had stopped paying rent when she thought she was going to be evicted. She said that her health had improved, and her work position was now stable. She had consulted Shelter Scotland regarding the eviction application, and she had also been in touch with a debt charity called Step Change which had assisted her with her finances. She had tried to get assistance from someone at Shelter to attend the case management discussion with her but that had not been possible. She was keen to stay in the property if she could.

9. Ms Butchart explained that she had hoped to enter into an arrangement to pay the arrears off, but she had been asked to pay £1000 up front before any instalments, and she simply could not do this or borrow this money as had been suggested by the property owner. She lived alone at the property and was not in receipt of benefits.

10. Mr Letney confirmed that the Respondent had been a tenant in the property since 2014 having initially been a tenant under a previous tenancy agreement. He confirmed

that the monthly rent was £500 per month, the property was in what he described as a good area and the rent was a fair rent. He was asked about the impact of the unpaid rent on the landlord and indicated that the landlord was effectively requiring to operate as a charity and could not sustain that as this as the rent from this property assisted towards pension provision. The Tribunal Legal member asked him regarding pre action protocol letters which might have been sent to the Respondent. He confirmed that there had been numerous emails and correspondence with the Respondent over the matter of the rent arrears and it was standard practice for tenants to be referred to sources of assistance in a situation where the rent was in arrears. He said that these could be provided for the tribunal.

11. The Tribunal adjourned to consider its decision and indicated to the parties that it required more information on why it would be reasonable to grant an eviction order and that it required sight of any correspondence with the Respondent signposting her to sources of assistance in relation to the rent arrears. The Tribunal indicated it would issue a direction requiring written representations on the issue of reasonableness from the Applicant's representative, an up-to-date rent statement and copies of any pre action protocol letters send to the Respondent. The Direction would also require confirmation from the Respondent of rent paid and any proposals for payment of the rent arrears.

12. Mr Letney raised the issue of whether the rent was going to be paid going forward given that the matter had not been dealt with that day. The Respondent Ms Butchart said that she could pay rent and would do that.

Hearing

13. The application was set down for a hearing on 22nd March 2024 at 10 am. At the Hearing the Applicant was represented again by Mr Paul Letney of Pavilion Properties and the Respondent attended and was represented by her sister Mrs Lynn Norrie. Both parties wished all their written presentations to be considered by the Tribunal in making its decision.

14. Since the case management discussion additional representations and documents had been lodged. For the Applicant four screenshots had been lodged and an up-to-date rent statement. The Respondent had lodged authority for her sister to represent her and an arrears payment proposal together with an update on her position regarding the payment or rent and other personal matters. The update was not initially crossed over to the Applicant as it contained sensitive personal information regarding an assault. At the start of the hearing the Respondent, Ms Butchart, gave permission for this to be crossed over to Mr Letney and this was done.

15. The Tribunal was advised that the rent had been paid in full for December 2023, January, February and March 2024. In addition, £40 towards rent arrears had been paid in January, February and March 2024. Mr Letney advised that the Respondent had not been in contact with the Letting Agents but her mother had been in contact and paid £500 towards the rent and arrears. The Respondent 's mother had advised that the Respondent would be away for a while. Facebook posts and comments had

been lodged on behalf of the Respondent and Mr Letney indicated there was concern that the Respondent was living elsewhere, running a spray tan business and going on holiday, all whilst the rent was unpaid.

16. Mrs Norrie advised that the family had not known Ms Butchart was not managing her finances or the issues around payment of the rent. The family had assisted her and they had worked with her to try to come up with a plan to have the arrears paid in full and the rent paid on time each month. Mrs Norrie indicated that Ms Butchart had not been away enjoying herself over Christmas but had gone to Stornoway to take short-term work in a care home there. It was denied that she was running a spray tan business and it was suggested that she did this for friends. She had returned after Christmas and was still living in the property. She had also taken work in Cupar. She wanted to continue to live at the property. It was not possible to pay a lump sum towards the rent arrears just now but she intended to pay extra money towards the arrears whenever she could. Mrs Norrie indicated that the family would assist her to pay the rent wherever possible if that was needed.

17. Mr Letney confirmed that the rent had been increased by notice given in November 2023 and as of the end of February 2024 was now £525 per month.

18. Mr Letney indicated that he was prepared to recommend the proposal to pay the rent going forward together with £40 per month to his client and suggested he telephone her during the hearing to take her instructions. The Tribunal adjourned for him to take instructions. When the Tribunal reconvened Mr Letney advised that his client wished to continue to seek an eviction order and was perhaps focussing on the history of the tenancy and a view that she had formed given the history, that the Respondent perhaps had her "head in the sand" regarding the rent arrears. Ms Butchart considered that this was not what she had understood as she said that the position had changed with the landlord over time. Ms Butchart said that initially Jodie at Pavilion Properties had told her that she would require to pay £1000 towards the rent arrears in a lump sum and then the landlady had met her mother and sister and explained that her aim was to have the rent paid in full each month and Ms Butchart indicated that she was now doing that.

19. Mr Letney was asked what the Applicant's intentions were regarding the property if the Respondent were evicted. He was not aware of the Applicant's plan if the property became vacant and was aware that the Applicant had other properties. Mr Letney suggested that the parties meet for a discussion to see if a way forward could be found. The Respondent was content to do that. Mrs Norrie asked if a date could be arranged which would allow her to attend any meeting also.

20. The Tribunal Members considered that it was appropriate to continue the hearing to a later date to allow for a discussion to take place. The Tribunal Legal Member indicated that whilst no advice could be given it might be in the Respondent's interest to continue to pay rent and to make any payments that could be made towards the rent arrears. The Hearing was continued until 3rd July 2024 at 2pm and the Tribunal issued a Direction to parties to confirm in advance of any continued hearing whether an agreement had been reached, confirmation as to whether the Director of the

Applicant company with whom Mr Letney was dealing would attend to give evidence at any future hearing, and an up-to-date rent statement.

21. At the continued hearing Mr Letney appeared again on behalf of the Applicant. The Respondent also attended and was again represented by her sister Mrs Norrie, no meeting had taken place between the parties. No up-to-date rent statement had been lodged and Mr Letney advised that he had had no discussion with the Director of the Applicant company he was dealing with about attending the hearing to give evidence. He apologised for not adhering to the Direction. He said that when he had heard nothing from the Respondent regarding a meeting he had gone to the property and knocked at the door but had received no answer. The Respondent explained that this had caused her stress and she felt this was breaking a boundary and that this had frightened her as she did not know who Mr Letney was. Mrs Norrie was concerned that she had asked if she could be advised of any meeting as she wished to attend on behalf of the Respondent.

22. Mr Letney led no evidence on behalf of the Respondent. He indicated that the Applicant Director of the landlord company believed that the Respondent had her son living with her and was unhappy about that. The Respondent gave evidence and said that she had "got herself into a mess" and she said she accepted that the rent arrears were her fault. She had been struggling with her health and in getting shifts. She had been assisted by the Step Change Charity and was paying full rent and £40 each month towards the rent arrears. She accepted that she had missed payments and said that she had been unwell and not having a wage coming in. Her dog had also passed away. She said she had been told by the letting agent staff not to worry about the situation and then she had been told that she required to make an upfront payment toward the rent arrears of £1000. She had also understood that the landlord's main priority was having the rent paid each month and not the level of arrears. She said she had now paid the monthly rent for seven months and was paying as much as she could. She could not come up with a lump sum payment. She said her family were going to assist her to make sure that she paid the monthly rent and the rent arrears as agreed. She described how she had expected a meeting to be arranged through her sister Mrs Norrie but this had not taken place. She said that she had been sexually assaulted in 2023 and when Mr Letney whom she did not know had come to the door she had become frightened and felt that a boundary had been broken. She said that her son was 28 and had not lived with her for years. She lived alone at the property.

23. The Tribunal had received written representations from the Applicant and on behalf of the Respondent regarding a property inspection and various repairs said to be required at the property. For the Applicant, Mrs McDonald indicated in written representations that the payment proposal to pay of rent arrears at £40 per month was unacceptable and that the continued eviction had taken a toll on her mental health and caused her anxiety which had made some of her medical conditions flare up badly. She outlined her position regarding repairs said to be required and indicated that some would be attended to if access was given and asked for photographs to be provided for others. She indicated that the cost of a new bathroom installed 2 years previously had not been recouped because of the rent arrears. There had been issues in gaining access to the property for essential work or inspections. The Respondent Ms Butchart responded to this indicating that access to the property could be arranged through her

sister Mrs Norrie and that communication should go through Mrs Norrie. In this email she set out maintenance matters which she said were still outstanding.

24. During the continued hearing Mr Letney was asked about the rent increase which he said had taken effect in February of 2024. There was a disagreement about when this had taken place with Mrs Norrie for the Respondent saying this had taken effect from December 2023. The rent had increased from £500 to £525 and Mr Letney was asked if this had been carried out in breach of the rent increase cap in existence at that time. He said this was not the case but indicated that for the purposes of the tribunal and going forward the rent should be regarded as £500 per month. He did not explain the reason for this concession but accepted that the rent from December 2024 should be regarded as £500 per calendar month and that this would take the arrears to £5500. This sum did not appear to be contested on behalf of the Respondent. Since the rent payable appeared to have returned to £500 a month the Respondent was asked if this meant that she could pay that sum plus £65 towards the arrears each month and she accepted that this would be possible given that this would not increase the amount she was paying each month, as she had been paying £525 and £40 in rent arrears.

25. Mr Letney did not question the Respondent nor did he make any additional submissions at the continued hearing as to the Applicant's position. He said that the Applicant director who was instructing him did not want to give personal financial information to the tribunal and said that the eviction was causing her stress and concern. He said that the offer to pay off the rent arrears which was currently in place would take too long to pay off. She said he said that the Applicant had personal and emotional reasons for wanting a clean start but these were not disclosed. Although he could not give the applicant's financial position, he said that he suspected that the reasons for wanting a clean break were not financial reasons. He was asked about his indication to the tribunal that he would recommend the offer of repayment of the arrears at £40 per month to his client. He said that sometimes for commercial reasons keeping a tenant in place is a better option rather than seeking a new tenant but his client had taken a different view having discussed this with other directors of the company. He accepted that no pre-action protocol letters had been sent to the Respondent before the tribunal proceedings had commenced.

Findings in Fact.

26. The parties entered into a private residential tenancy of the property with effect from the first of July 2022 with monthly rent payable at the rate of £500

27. The Respondent has lived at the property since 2014 and has been a tenant at the property in respect of another tenancy agreement before the private residential tenancy considered in this application.

28. Rent arrears started to accrue in terms of the current tenancy early in the tenancy to which this application relates.

29. The rent was increased in December 2023 to £525 per month but it is conceded by the Applicant that the rent from that date should be regarded as £500 per month

and the rent arrears accrued in terms of the tenancy as of July 2024 amount to £5500 and that rent has been in arrears for over 3 consecutive months.

30. The Applicant accepts that the current rent monthly rent to the property with effect from December 2023 is to be regarded as £500 per month.

31. The Respondent accepts that she is at fault in relation to the rent arrears and had struggled to obtain shifts at work and was having health problems.

32. The Respondent has now paid the monthly rent for seven months and has made payments towards the rent arrears at the rate of £40 per month since January 2024 and the rent arrears are slowly decreasing.

33. The Respondent wishes to continue to live at the property where she lives alone and indicates that she will pay more towards the rent arrears than the monthly sum she has been paying if that is possible for her.

34. The Respondent's family have indicated that they will assist her in maintaining rent payments and payment of rent arrears of £40 per month on an ongoing basis.

35. The landlord company has a number of directors and has a number of properties.

36. Mrs McDonald one of the Directors of the Applicant company believes that the eviction process has affected her health.

37. The Applicant landlord installed a new bathroom at the property some two years prior to April 2024 and has not been able to recoup the costs of that installation given the rent arrears accrued.

38. The applicant landlord's position is that the repayment of the rent arrears at the rate offered by the Respondent i.e. £40 per month would take too long to pay off, some 11 years and this is not acceptable to them.

39. If the Respondent continues to make payments of rent and payments towards rent arrears monthly amounting to £565, then with rent at £500 per month the rent arrears will be paid off in 84 months.

40. The Respondent was assaulted in 2023 and is concerned when people she does not know attend at the property.

41. A Notice to Leave the property dated 10th April 2023 and in proper form was sent to the Respondent by e-mail and this set out that no application would be made to the Tribunal before 12th May 2023.

42. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Dundee City Council in relation to this application on 13th June 2023.

43. No pre-action protocol letters were sent to the Respondent before the Tribunal proceedings commenced.

44. There have been issues raised between the parties as to maintenance and repairs at the property and the Applicant has encountered issues in accessing the property.

45. The Respondent has requested that all communication to her should go through her sister and that her sister will arrange access to the property for all required or essential maintenance and repairs.

Reasons for Decision

46. In this application the eviction ground was not in dispute and the tribunal had to consider simply the question of reasonableness. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

47. The tribunal was asked to consider written representations made on behalf of both parties. The Applicant did not lead any evidence nor was there any cross-examination of the Respondent when she gave evidence. The tribunal heard evidence from the Respondent. The tribunal found the evidence of the Respondent to be credible, and reliable and accepted her evidence. She was candid about accepting responsibility for the rent arrears and expressed a desire to stay at the property. The rent has been paid in full for some seven months as of the time of the decision with the Respondent making payments towards arrears at the rate of £40 per month since the start of 2024.

48. The main issue in this application was the level of rent arrears which are significant. Other issues were raised such as difficulties in obtaining access to the property for repairs and inspection and outstanding maintenance raised by the Respondent. Whilst the Tribunal accepted that these issues existed in terms of its consideration of reasonableness, it did not consider that these factors carried great weight in the balancing exercise as to whether to grant the order. The Tribunal also considered the fact that no pre-action protocol letters had been sent in this application until tribunal proceedings commenced. Landlords should engage with pre-action protocols before seeking to evict using rent arrears grounds. When considering whether it is reasonable to grant an eviction order, the Tribunal must consider the extent to which the landlord has complied with the pre-action protocols. In this case, there was no compliance with the pre-action protocols in a tenancy where the tenant had clear difficulties in paying the rent, so this was a factor which was considered and given some weight in consideration of the decision.

49. The central issue here was the level of rent arrears which appeared to equate to some 11 months’ rent in terms of the tenancy agreement. The Respondent accepts full responsibility for the rent arrears and explained how these had come about and wishes to remain in the property. She has paid full rent for seven months as of the time of the continued hearing in July 2024 and has paid the sum of £40 towards rent arrears since the start of 2024. She appears to be re-engaged as far as her responsibilities as a tenant are concerned, has obtained advice from a debt charity, and has the support of her family in maintaining payments towards arrears. The rent arrears are now reducing slowly.

50. The tribunal considered the relative needs of the Applicant and Respondent. Little information was given regarding the Applicant company which owns the property. It was said that this company had other properties and a number of directors. It was said that the director instructing the application considered that given the history of the tenancy a fresh start was required for personal and emotional reasons but these were not disclosed. It was said that the eviction process was affecting the health of one of the directors Mrs McDonald and she herself wrote to the tribunal to explain this. No further information was given regarding health conditions that she may have and on the face of what was submitted to the tribunal it was suggested that the eviction process and the length of time it was taking was affecting her health rather than the rent arrears. In the absence of further information on this point the tribunal could not make a finding in fact other than that she considered her health to be affected. The tribunal accepted Mrs MacDonal's assertion that the rent arrears meant that it was not possible for the Applicants to recoup the cost of a bathroom installed two years before. The tribunal accepts that as the owner of the property they have the right to deal with it as they see fit however there must be a reasoned factual basis for an application for eviction and in this application, the Tribunal considered that it simply had insufficient information on the effect that the rent arrears were having on the Applicant company or their intentions regarding the property. It is perfectly valid for a landlord to say that they wish a fresh start given the history of a tenancy but the vagueness of that statement meant that the tribunal could only give limited weight to the question of the rent arrears as regards the Applicant given that there was little information as to how these were being managed by the Applicant and what effect if any they had on their financial position.

51. The tribunal did not consider it would be appropriate to find that the very level of rent arrears looked at in isolation meant that it would be reasonable to grant the application. Whilst in many cases this level of rent arrears could not be financially sustained by an Applicant and would have an effect on their finances, the Tribunal cannot simply make the assumption in the absence of information that that is the case in this application. The only information the tribunal had was that the rent arrears had prevented the Applicants from recouping the cost of a new bathroom installed at the property some two years before and also that when no rent was being paid this was affecting the ability of one of the directors to make pension provision. The Tribunal was given no information about the financial health of the company or the relative financial positions of the directors and how these had been affected by the rent arrears or the situation now that rent has been paid for seven months. Furthermore, no information was provided to the Tribunal to demonstrate that evicting the tenant would improve the Applicant's financial position.

52. In weighing up the full circumstances of each of the parties and acknowledging that the level of rent arrears was the main issue, the tribunal took the view that the decisive factor in the determination of reasonableness was the fact that although rent arrears amounting to 11 months' rent have been accrued, the Respondent, who appeared vulnerable, is now engaging with her responsibilities as a tenant, has paid the rent for seven months and is being assisted by her family to maintain her financial obligations and is making repayments towards the rent arrears which are decreasing slowly. She expressed her desire to stay at the property and has been living there

since 2014. She has obtained help for her financial problems and appears with the assistance of her sister to be engaging with any required repairs and maintenance at the property and the need to allow access. The Tribunal decision was based on the unusual circumstances of this case in that the Tribunal had little information from the Applicants regarding their position on reasonableness although this had been requested and the Tribunal had asked if one of the Applicant directors would be giving evidence. In all the circumstances as weighed up by the tribunal the tribunal concluded that it would not be reasonable to grant the application for eviction.

Decision

The Tribunal refused the application for an eviction order in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) 2016 the Tribunal having considered that it was not reasonable to grant an order.

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

V. Bremner

3.7.24

Legal Member

Date