



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(10) of the Private housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/1432

Re: Property at 9 Crescent Lane, Dundee, DD4 6DP (“the Property”)

Parties:

Amke Property Ltd, 129A Broughty Ferry Road, Dundee, DD4 6LB (“the Applicant”)

Miss Nicola Tindal, 9 Crescent Lane, Dundee, DD4 6DP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (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 27 March 2024 the Applicant’s representative, Mr Azam Salimi, applied to the Tribunal for an order for the eviction of the Respondent from the property under ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The Applicant’s representative submitted a copy of a lease, copy Notice to Leave with proof of service, Pre-action Requirement emails, a rent statement, a Section 11 Notice with proof of intimation and other documents in support of the application.
2. By Notice of Acceptance dated 26 April 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 19 June 2024.

4. By email dated 22 August 2024 the Respondent's representatives, Dundee Law Centre, submitted written representations to the Tribunal.

The Case Management Discussion

5. A CMD was held by videoconference on 29 August 2024. The Respondent's representative Mr Azam Salimi attended and was supported by his wife Mrs Vaqar Salimi. The Respondent also attended and was represented by Mr Kenneth Marshall from Dundee Law Centre.
6. After explaining the purpose of a CMD the Tribunal established that it was agreed that although the Respondent had been a tenant in the property since 2012 under a Short Assured Tenancy the current Private Residential Tenancy had commenced on 5 November 2021 at a rent of £615.00 per calendar month. It was also agreed that the Respondent had been served with a Notice to Leave under ground 12A of Schedule 3 of the 2016 Act on 13 December 2023 and that at that time the Respondent owed rent of £3800.00. The Tribunal also noted that the Applicant's representative had intimated the proceedings to Dundee City Council by way of a Section 11 Notice by email on 27 March 2024 and that Pre-Action Requirement Letters had been sent to the Respondent by email on 3 April, 12 June and 4 July 2023.
7. The Tribunal queried with Mr Salimi what the level of rent arrears was currently outstanding and was advised that they amounted to £4675.00. The Tribunal referred the Applicant to the written representations submitted on behalf of the Respondent and asked if the Applicant was prepared to agree to the Respondent's proposal that she remain in the property with the rent being paid from Universal Credit Housing Costs plus an additional £150.00 per month towards the arrears.
8. Mr Salimi advised the Tribunal that the Applicant did not agree to the Respondent's proposal although he sympathised with the Respondent and her health situation and the break up of her relationship with her partner. Mr Salimi advised the Tribunal that the Respondent had stopped paying rent in March 2023 following her illness and surgery. He said the Applicant had been understanding and had given the Respondent time to recover and had remained in contact with the Respondent but that she had frequently not replied to communications. Mr Salimi went on to say that after a few months and as the debt was increasing a pre-action letter was sent on 3 April 2023 and in June 2023 the Respondent offered to start paying the full rent plus £250.00 per month towards the arrears but had not kept to the agreement. Mr Salimi said he had contacted Universal Credit at the end of June 2023 and had been advised that the Respondent was not receiving Universal Credit. Mr Salimi also advised the Tribunal that the property needed a total refurbishment and that he could have included that as a ground on the Notice to Leave but had thought it would be quicker to only use ground 12A but on reflection should have used both grounds. Mr Salimi also said that the current rent was too low for a four-bedroom property and would need to be increased and he doubted that the

Respondent could afford to pay an increased rent. He submitted that the property had to be empty to carry out the refurbishment and thought that if evicted the Respondent would be provided with accommodation by the Council.

9. For the Respondent Mr Marshall accepted that the property was in need of refurbishment but submitted that a future rent increase was not relevant to the Tribunal's consideration of the matters before it. He said that whilst it was likely that the local authority would provide the Respondent and her daughter with temporary accommodation it was unlikely that they would accommodate her two dogs that she was very attached to.
10. The Tribunal queried with Mr Salimi if he was asking to amend the grounds for eviction to include the additional ground 3 that the Applicant intended to carry out significantly disruptive works to the let property. Mr Salimi confirmed that was the case. For the Respondent, Mr Marshall confirmed he had no objection to the amended grounds.
11. In response to a further query from the Tribunal Mr Marshall confirmed that the maximum amount of Housing Cost the Respondent would be paid for the property would be £613.30. The Tribunal also noted the Respondent was under-occupying a four-bedroom property. The Tribunal also noted that the Respondent had separated from her former partner in June of this year and had then applied for Universal Credit which had recently been granted although she had not yet been paid the housing element but this would be backdated to the date of granting of Universal Credit.
12. Mr Salimi advised the Tribunal that the Applicant had ten or eleven properties in its portfolio and that the non-payment of rent by the Respondent had a significant impact on the finances of the Applicant.
13. For the Respondent, Mr Marshall submitted that if the Tribunal was minded to grant an order for eviction that it would be reasonable to postpone enforcement for a period of three months to allow the local authority time to find the Respondent suitable alternative accommodation.
14. For the Applicant, Mr Salimi said he had no objection as long as the rent was paid and the Respondent contributed to the arrears.

Findings in Fact

15. The Respondent has been a tenant in the property since 2012.
16. The Respondent commenced a Private Residential Tenancy of the property on 5 November 2021.
17. The Respondent fell into arrears of rent in March 2023.
18. The Applicant sent Pre-Action Requirement Letters by email to the Respondent on 3 April, 12 June and 4 July 2024.

19. The Applicant sent a Notice to Leave under Ground 12 A of Schedule 3 of the 2016 Act to the Respondent on 13 December 2023.
20. The Respondent owed rent to the Applicant in the sum of £3800.00 as at 13 December 2023.
21. The Applicant intimated these proceedings to Dundee City Council by way of a Section 11 Notice by email dated 27 March 2024.
22. The Respondent currently owes rent amounting to £4675.00.
23. The Applicant intends to completely refurbish the property and requires the property to be empty to carry out the works.
24. The Respondent's failure to pay rent has an adverse impact on the Applicant's finances.
25. The Respondent has suffered from lung cancer and undergone surgery in 2023.
26. The Respondent has separated from her partner.
27. The Respondent's Universal Credit was stopped when her partner was living in the property due to the level of his earnings.
28. The Respondent's Universal Credit payments have recently recommenced following the end of her relationship but no Housing Cost payments have yet been paid.
29. The Respondent lives with her 12-year-old daughter and two dogs at the property.

Reasons for Decision

30. The Tribunal was satisfied from the written representations and documents together with the oral submissions that the Respondent had been a tenant at the property since 2012 and had entered into a Private Residential Tenancy Agreement on 5 November 2021 at a rent of £615.00 per calendar month. The Tribunal was also satisfied that the Respondent fell into arrears in March 2023 and was sent pre-action requirement letters in April June and July 2023 before being served with a Notice to Leave under Ground 12 A of Schedule 3 of the 2016 Act on 13 December 2023. The Tribunal was also satisfied that intimation of the current proceedings had been given to Dundee City Council by way of a Section 11 Notice by email on 27 March 2024. Having taken account of the fact that the Applicant intended to completely renovate the property and that this could only be done if the Respondent removed from the property and as the Applicant's motion to add the additional ground 3 to the application was not opposed the Tribunal allowed the grounds to be amended in terms of Section

52(5)(b) of the 2016 Act. The Tribunal was therefore satisfied that procedurally the Applicant had satisfied the requirements for an order for eviction subject to it being reasonable in all the circumstances.

31. In reaching its decision the Tribunal took account of the financial impact the failure to pay rent had on the Applicant which although it had a number of let properties did not have a significant portfolio. The Tribunal also took account of the fact that it was accepted by both parties that the property was in need of refurbishment. The Tribunal acknowledged that the Respondent had gone through a difficult time in her life with a very serious health condition and had been let down by her former partner who had not helped to pay her rent during this period and left her in a vulnerable position. However it did seem likely that even if the Respondent's housing cost payments were reinstated the Respondent would struggle to maintain the proposed additional payments to reduce the rent arrears and this would become even more difficult if the rent were to increase as suggested would happen. The Tribunal also noted that a previous agreement to reduce the arrears had not been maintained. Therefore, whilst it acknowledged that granting the order sought would have an adverse effect on the Respondent and her daughter the Tribunal was satisfied in the circumstances it was reasonable to grant the order but in order to give the local authority and the Respondent more time to find suitable accommodation for the Respondent the Tribunal determined that the order would not come into effect for a period of three months from the date of the decision.

Decision

32. The Tribunal being satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing determined to grant an order for the eviction of the Respondent from the property under Grounds 3 and 12A of the 2016 Act but that enforcement of the order should be suspended for a period of three months from the date of the decision.

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**

**29 August 2024
Date**

