



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/24/1792

Re: Property at 58 Watermill Rd, Fraserburgh, AB43 9RJ (“the Property”)

Parties:

Mr George Thomson, Mrs Margaret Thomson, 5 Randolph Terrace, Stirling, FK7 9AA (“the Applicant”)

Mr Nicholas Duncan, Miss Shelley Cameron, 58 Watermill Rd, Fraserburgh, AB43 9RJ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 22nd April 2024. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on grounds 1 and 12A of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 21st August 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 23rd September 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 23rd August 2024.
3. On 26th August 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondents by personal service upon the

Second Named Respondent, Ms Shelley Cameron. This was evidenced by Certificate of Intimation dated 26th August 2024.

The Case Management Discussion

4. A CMD was held on 23rd September 2024 at 10am by teleconferencing. The First Named Applicant was present and represented himself. He appeared and spoke on behalf of both Applicants. Both Respondents were present and represented themselves. The Second Named Respondent spoke on behalf of both Respondents for the majority of the time.
5. The First Named Applicant said that he was still seeking an order for eviction. The last payment was in December 2023. He has had two letting agents deal with it but now manages it himself. He considers that both letting agents gave up due to the arrears as they were not making any money from the let. The arrears are currently £27893. On a previous occasion when the arrears were increasing the letting agent, at the time, raised an eviction action but withdrew it when the payments recommenced. The First Named Applicant said that he believed that the Respondents were in receipt of Universal Credit but not paying over the Housing Element. He said that the Universal Credit amount that they receive is £750 per month and the Respondents are to pay £50 themselves.
6. In terms of contact he believes that he has not had contact from the Respondents since the end of last year. The previous letting agent had tried to make contact regarding the arrears.
7. The First Named Applicant said that he now had to sell the Property. There was no income coming from it. It was supposed to be his pension. He has two other properties which are due to be sold on 27th September 2024. He is of pensionable age and no longer wants to be a landlord.
8. The Second Named Respondent said that there was no claim for Universal Credit as her husband was working. Both Respondents strongly dispute that the full amount of the arrears are due. They believed that they were only obligated to pay £750 per month as this is what Universal Credit would pay to their rent charge. The Tribunal noted that it was £800 in the lease and this was the only information that it had on the rent charge. The Respondents also were very frustrated at the lack of repairs which had been undertaken. The First Named Respondent said that from December 2023 no rent had been paid as they were withholding the rent. The Tribunal asked if this had been done in line with the correct legal procedure of sending a written notification to the Applicants and then keeping the money in a separate bank account to be returned once the repairs had been completed. The Respondents had said that they had not known that was what they were to do. The Tribunal noted that there were arrears beyond the disputed £50 per month and this year's rent as there seemed to be a period from the start of the tenancy where there was not a full rent paid for many months. The Respondents were not in a position to accept or deny this but accepted that some arrears were due. They noted that they had undertaken their own repairs to the Property.

9. The Tribunal noted that this was a no fault eviction. The arrears were only being discussed in terms of reasonableness. This was not a payment case meaning that there was not an order for payment arising out of this CMD.
10. The Second Named Respondent said that she has spoken to her local authority with regard to being rehoused. She does not want another private tenancy given the issues with the repairs and the lack of security with the tenancy. She has been told by her local authority that she will only be rehoused once an order has been granted. She is not in a position to oppose an order being granted in terms of the Applicants selling the Property. She lives in the Property with her husband, the First Named Respondent, her 17 year old son and her 16 year old daughter.
11. The First Named Applicant disputed the issues raised by the Respondents in terms of the repairs undertaken but noted that it was not an issue for this Tribunal.
12. The Tribunal noted that one part of the application was raised under ground 12A (6 months rent arrears). This should now have been ground 12 (3 months rent arrears). The Respondents did not have an issue in this being amended from ground 12A to ground 12.
13. The Tribunal was satisfied that it was appropriate to grant an order for eviction under ground 1 particularly as this was not opposed.

Findings and reason for decision

14. A Private Rented Tenancy Agreement commenced 13th July 2018.
15. The Applicants wish to sell the Property. They no longer wish to be landlords. They own two other properties which are due to be sold on 27th September 2024.
16. The Respondents have persistently failed to pay their rent charge. The rent payments are due to be paid each month. There have been many months where there has been less than the monthly rent charge paid. The arrears are currently £27893. The Respondents dispute some of the arrears. There have been various reasons for the arrears accruing. This including issues with repairs when the Respondents have withheld their rent charge, albeit not in a proper legal way and no longer have the funds.
17. The Respondents are not opposed to an order for eviction being granted.
18. There are no issues of reasonableness that prevent an order from being granted.

Decision

19. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

23rd September 2024

Legal Member/Chair

Date