



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/23/4602

Re: Property at 6 Hill Street, Cowdenbeath, KY4 9AY (“the Property”)

Parties:

Mr Keith Burdett, 2 School Street, Cowdenbeath, Fife, KY4 8LT (“the Applicant”)

Mr Thomas Murphy, 6 Hill Street, Cowdenbeath, KY4 9AY (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted.

Background

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 20 March 2024 informing both parties that a CMD had been assigned for 30 April 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal had sufficient information and considered the procedure to have been fair. The Respondents were invited to make written representations by 10 April 2024. No written representations were received.

4. On 12 April 2024 the Tribunal received an updated rent statement from the Applicant's representative. A copy of this was sent to the Respondent.

The Case Management Discussion (CMD) 30 April 2024

5. The CMD took place by teleconference. The Applicant was represented by Mr Findlay Crofts solicitor. The Respondent was present supported by his wife.

6. This application was conjoined with an application for payment made under Chamber reference CV/23/4603.

The Respondent's Position at the CMD

7. The Respondent stated that he was opposed to both applications. He stated that he had lived in the Property for 5 years and had experienced nothing but problems. He made reference to numerous issues within the Property;-

- The radiators and the boiler were obsolete and not functioning
- There was "sludge in the system"
- Water was leaking from the shower upstairs, which had caused the ceiling to cave in due to dampness.

8. Due to these issues he stated that he was withholding rent as none of the repairs had been carried out. He had brought all of this to the Applicant's attention on numerous occasions, by telephone although not in writing.

9. He had not placed the rent that was being withheld into another account meantime and did not have the money to pay for the rent as the family, "had to survive" in the meantime.

10. The required repairs had impacted on his 5 year old daughter's health as she had now contracted asthma.

11. He stated that he lived in the Property along with his wife who was heavily pregnant , and could go into labour at any time as , "she is high risk ",and his 5 year old daughter. He said that his wife could give birth any day now, and still the Applicant had not carried out the required repairs. The landlord's 3 daughters (shared with the Respondent's wife) also reside there. They are aged 20, 18 and 17. He stated that he did not like the idea of bringing up a new baby in the Property. His wife also has underlying health problems. She has asthma and depression. He said that she had been in and out of hospital for the past 4-5 years due to all the stress caused by the situation. As a result, he has needed to take time off work and look after their 5 year old .He suggested that the Applicant had a "stranglehold" on his wife at the moment and that she feels as if she can't get away from him.

12. The Respondent is in gainful employment as a factory worker and works 13 hour shifts full-time. His wife's 20 year old daughter also works. The other two teenage daughters are presently unemployed and in full time education.

13. He stated that he had been in touch with Fife Council's Environmental Health Department. They had visited the Property and had taken photographs.

14. He had also on numerous occasions been in touch with the local authority in order to source alternative accommodation to the Property, which is 5 bedroomed. He said, that at the moment, it is hard to source alternative accommodation, and that no properties are available. He has been told he will just need to wait, or the family will require to be placed into temporary accommodation.

15. The Applicant stated that his wife had numerous messages from the Applicant regarding the required repairs, and these could be readily lodged along with photographs substantiating the repairs required. He may also have medical reports to verify the impact the outstanding repairs have had on both his wife and young daughter.

16. Regarding witnesses, he said that both he and his wife would give evidence. He stated that his wife's actual due date was 2 June 2024, and asked for some lee-way around that date regarding a Hearing. He also wished to call a representative from Fife Council's Environmental Health Department and a Housing Officer. The Respondent was told by the Tribunal that it would be a matter for him to secure the attendance of any witnesses he wished to give evidence for him.

The Applicant's Position at the CMD

17. Mr Crofts stated that the required Notice to Leave had been served. He said that the local authority had received the Section 11 Notice, and it was reasonable in the circumstances, given the substantial rent arrears, to grant orders for Eviction and Payment today. The rent has been in arrears since 2020 and no rent has been paid since April 2023, and no efforts had been made to make payment.

18. He said that the Respondent had not made the Applicant aware of rent being withheld as far as he was aware and this was the first he had heard of it .

19. He was uncertain whether the Property was the only property owned by the Applicant. He stated that he was aware that the significant arrears were a burden on him. He was unable to state whether or not there was a mortgage over the Property.

20. Mr Crofts said that he would liaise further with his client. He did not anticipate that there would be any further documents to lodge. He was of the view that the Applicant would give evidence.

Matters Capable of Agreement at the CMD

21. Parties were able to agree;-

- The terms of the PRT.
- The Notice to Leave was served and received.
- The rent detailed in the PRT is £750 per month.

- The Respondent was in agreement with the rent schedule provided by the Applicant.
- The Respondent agreed that he received the pre-action requirements communication

22. The Tribunal issued Directions in the following terms;-

The Applicant is required to provide:

1. A list of any witnesses including addresses and contact details

The Respondent is required to provide:

1. A list of any documents relied upon him in respect of opposition to this application, including any text messages/ social media messages and/or photographs showing the alleged required repairs at the Property, and evidencing the position rent is being withheld. Said productions require to be paginated and indexed.
2. A list of any witnesses including addresses and contact details

The said documentation should be lodged with the Chamber no later than close of business on 21 June 2024.

23. The Applicant complied with the Directions. The Respondent did not comply with the Direction.

The Hearing 10 September 2024

24. The Hearing took place by teleconference. The Applicant was present and gave evidence. He was represented by Mr Findlay Crofts solicitor. The Respondent was present. He gave evidence together with his wife.

25. On 3 September 2024 the Applicant had lodged an updated rent statement together with an application to amend the application to reflect the current rent arrears. This was lodged timeously and intimated on the Respondent. The Respondent did not oppose the application to amend, and agreed that the rent account reflected the correct outstanding arrears of rent which amounted to £14,430 as at 26 August 2024.

26. In addition, the Applicant had lodged an Inventory of Productions which incorporated the Gas Safety record for the Property dated 24 June 2024 and Electrical Condition Installation Report dated 10 November 2022.

27. The Respondent was asked by the Tribunal why he had not complied with the Direction. He said that he had been in a lot of pain with a hernia which was due to be

operated on 17 September 2024. In addition his wife had given birth and the couple had a 3 month son who needed to be cared for.

Evidence of the Applicant (Summary)

28. The Applicant said that he was the landlord for the Property. He is an electrician and has his own business.

29. The Respondent moved into the Property on 4 September 2019. It is only Mr Murphy who is the tenant on the tenancy agreement. As far as he is aware, the couple reside together with their two young children. Mrs Murphy is the Applicant's former partner and they share children together. He believes his youngest daughter who is 17 years of age continues to live with the Respondent and Mrs Murphy.

30. The Respondent has not been reliable in maintaining rent payments. The last time the Applicant received full rent was over a year ago. The last payment he received was in April 2023 which was for £550, so £200 less than the rental due. The rent arrears are currently £14,430.

31. The Respondent has never requested rent abatement or retention for the Property. Approximately 2 months after the Respondent stopped paying rent he was told that there were repair problems in the Property. It was only when he asked about the rent that the repairs issues were brought to his attention, he thought via 'Whatsapp' messages and "via the grapevine".

32. He was told that there were issues regarding dampness. The Applicant said that he had installed a brand new kitchen in the Property as well as brand new windows on the ground floor. He said that he was not advised that the upstairs shower was leaking until there were issues when the ceiling in the hallway collapsed causing considerable damage.

33. The Applicant said that he attended at the Property when these issues were brought to his attention together with a joiner to make sure that the Property was electrically and structurally safe. They made the Property safe. There is aesthetic damage remaining in the hallway regarding the ceiling from the shower leaking upstairs. He does not have the funds to repair this. Floor boarding and replastering work remains outstanding. He simply does not have the funds to attend to that. The Property is wind and watertight. He attended to all the repairs that had been brought to his attention and the Property is perfectly habitable.

34. He had been told that there was a leak at the boiler. There was no leak. Regarding the dampness in the master bedroom he was not allowed entry to look at the issue by the Respondent.

35. A new boiler was installed in June 2023. He has always sent a qualified engineer out to check this and the most recent inspection report has been lodged from June 2024.

36. He said that the Property has been kept in a deplorable condition by the Respondent. It is in a very poor condition and there is damage caused everywhere.

37. The Applicant said that he had received one letter from Fife Council over a year and a bit ago. There were no deadlines given by the local authority regarding works required. He has heard nothing further from them. He had attended at the Property within the week when he received this communication.

38. He owns only one other property which is the home where he resides. There are outstanding mortgages on his home and the Property. The mortgage payments for the Property are £600 per month at the moment. The mortgage has not fallen into arrears. The matter of the outstanding rent due has massively impacted on the Applicant. He said that both his business and his personal accounts are in overdraft by thousands. He has been working 60 hour weeks. If his business goes under, he will be unable to pay for either mortgage. He envisages that when he recovers the Property he will need to sell it, potentially at a loss.

Evidence of the Respondent (Summary)

39. Mr Murphy said that the ceiling in the hall had collapsed due to the shower leaking and it has been in this state for some time.

40. Regarding the dampness in the Property, his wife had notified the Environmental Health department and they had been out to the Property. There had been no follow up by the department.

41. His wife suffers from asthma and her breathing has been affected as a consequence of the dampness. His younger daughter's breathing has also been affected and she has been unwell.

42. There are also outstanding issues with the boiler. When the valves are turned it continues to leak. Some radiator valves are also not opening properly.

43. He agreed that a new boiler was fitted and maintained that there have been ongoing issues and that the Gas Safety Certificate was wrong as it did not itemise these issues.

44. Both himself and his wife have required to take time off work. He is employed as a skilled operator in a fish factory. He is due to be operated on for a hernia on 17 September 2024. He has been off work for 4 months already, and he will need an 8 week recovery period after the operation. Meantime he is only receiving SSP of £100 per week. He has to buy food for the family, and provisions for the baby. It has been a struggle. He maintained that he was well within his rights to withhold rent.

45. The couple have not made an application for benefits as his wife works as well. He has not taken any advice regarding what benefits he may be entitled to.

46. Resident in the Property are Mr and Mrs Murphy, their 4 month son and 6 year old daughter. Mrs Murphy and the Applicant's oldest daughter who is 20 and youngest daughter aged 17 continue to live there. The third daughter moved out two weeks ago.

47. He said that his wife had made the Applicant aware that the rent was being withheld via 'Whatsapp' and text messages. His wife knows the Applicant better, so she has dealt with the communications. As the tenant, he has made no contact with the Applicant.

48. He has made the local authority aware of the eviction proceeding. There is no alternative accommodation available at the moment. They have been to the council 3 or 4 times.

49. When he made the decision to withhold rent he had not taken advice regarding the risk that he had put himself and his family in, regarding possible proceedings such as these. He had not placed the money due for rent into a separate bank account. He said that he had not been able to pay rent since March 2020 as at that time he had been furloughed.

50. Mr Murphy denied refusing the Applicant access to the bedroom in the Property to view the damp situation.

Evidence of Respondent's Witness Mrs Leanne Murphy (Summary)

51. Mrs Murphy said that the Property had previously been her home along with the Applicant and their 5 children. She said that there has always been an issue with the shower leaking. This had caused the ceiling to come down in the hall. She said that the Applicant had always been aware of the issue.

52. She herself has bad asthma, and has been in the high dependency unit several times because of this. She had contacted Environmental Health due to the dampness issues. They had attended and noted the details. She said that there were no smoke alarms and damp readings were taken. In the main downstairs bedroom a recording was taken on the wall showing 1.5 metres high of damp.

53. The radiators are full of sludge. A plumber has said that they need new radiators. She said that the Applicant had installed a new radiator in the living room but this still leaked, and her floors were all damaged as a consequence.

54. The local authority had sent a letter and an e-mail to the Applicant giving him 28 days to fix the outstanding repairs. This was over a year ago now. She denied refusing the Applicant access to view the damp.

55. She had brought the repair issues to the Applicant's attention by sending him messages and pictures of the ceiling. She had received abuse back. The light in the ceiling of the hall is still dangling.

56. No money has been put aside for the rent due to higher energy bills. She is currently absent from her work due to pelvic girdle pain. She said that an agreement was reached with the Applicant in March 2020 that less rent would be paid at that time as she was not working, and the Respondent was furloughed.

Findings in Fact

57. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 15 August 2019;
- (ii) In terms of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £750 per calendar month payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 31 October 2023;
- (iv) On 31 October 2023 the Respondent was in rent arrears over three consecutive months;
- (v) The Respondent has been in continuous arrears of rent since March 2020;
- (vi) The Respondent is in arrears of rent amounting to £14,430 at the date of the Hearing;
- (vii) No rent arrears have accrued as a consequence of delay or failure of payment of a relevant benefit;
- (viii) The Applicant has complied with the Pre-Action Protocol;
- (ix) The Respondent lives in the Property together with his wife and two young children aged 6 years and 3 months. In addition the Respondent’s wife’s two older daughters aged 17 and 20 also reside there;
- (x) The Respondent did not set out in writing to the Applicant that rent was being withheld due to outstanding repairs issues;
- (xi) The Respondent has not kept any withheld rent aside in a separate account;
- (xii) The Applicant has struggled to pay for the mortgage on the Property due to the outstanding rent arrears;
- (xiii) The Applicant has attended to outstanding repairs issues promptly and has produced a valid gas safety engineers report regarding the central heating system and boiler inspection;
- (xiv) There remains outstanding damage to the hall ceiling of an aesthetic nature;
- (xv) The Applicant has been denied access to areas of the Property to explore damp issues;
- (xvi) It is reasonable to grant the eviction order;

Reasons for Decision

58. *Section 51 of the 2016 Act states as follows:*

51 (1) *The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

(2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

(3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

(4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

59. Ground 12 of Schedule 3 to the 2016 Act states as follows:

(1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

(2) (2).....

(3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if— (a)for three or more consecutive months the tenant has been in arrears of rent, and (b)the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

(4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

(a) *whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*

(b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

(5) *For the purposes of this paragraph—*

(a) *references to a relevant benefit are to— (i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii)a payment on account awarded under regulation 91 of those Regulations, (iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent, (iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

(b) *references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

(6) *Regulations under sub-paragraph (4)(b) may make provision about—*

(a) *information which should be provided by a landlord to a tenant (including*

information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
(c) such other matters as the Scottish Ministers consider appropriate.

60. The Tribunal were of the view in this case that the Applicant had established Ground 12 given the extent of the rent arrears.

61. The Respondent maintained that rent had been withheld. The withholding of rent is an equitable remedy, the exercise of which is regulated by the Tribunal. The Tribunal requires to be satisfied that the remedy is being exercised in good faith. It is not the case here that the Respondent, pending the outcome of his action, has warned the Applicant that he was about to cease paying rent unless the necessary repairs were effected. He has left everything up to his wife. The Tribunal has not been provided, despite a Direction to this effect, with any evidence that this position was indeed conveyed to the Applicant.

62. The Respondent has taken no advice regarding the risk that he has placed himself and his family, in potentially losing their home given his adopted course of action.

63. Furthermore, the remedy of retaining of rent, entails that the Respondent should set this rent to one side, if indeed that had been his position, in order that, once required repairs have been effected, his obligation to pay rent, including withheld rent would revive. He has not demonstrated that he has done so and the Tribunal do not accept that he has acted in good faith in not paying the rent due. There was no suggestion that rent was being abated in any way.

64. The Respondent appeared not to have chased up Environmental Health regarding outstanding issues.

65. The Respondent has not made an application to the Tribunal regarding repairs outstanding, and no third party application from the local authority has been made.

66. The Tribunal do not accept the evidence that there are outstanding issues regarding the radiators and boiler system, standing the recent inspection report lodged.

67. The Respondent has chosen not to lodge any photographs or alternative expert statements/reports regarding the outstanding alleged repairs issues.

68. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered the position of both parties. The Applicant has been working 60 hour weeks trying to pay two mortgages. One for his own home and one for the Property. He is in debt as a consequence, and worried about the prospects of his business folding. The Respondent on the other hand has not been paying rent for a considerable period of

time. Given the amount of the arrears, together with the above reasons, and the fact that the Respondent candidly in his closing submissions said that he just wanted away from the Property as soon as possible, made it reasonable to grant the 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.

Y. McKenna

Yvonne McKenna

10 September 2024

Legal Member/Chair

Date