



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/24/0673

Re: Property at 1/2 3 Harley Street, Glasgow, G51 1AU (“the Property”)

Parties:

Mr Shazad Bakhsh, 247 West George Street, Glasgow, G2 4QE (“the Applicant”)

Mr Luke Bricknell, (‘the First Respondent’) Miss Suzanne Kilpatrick (‘the Second Respondent’), 1/2 3 Harley Street, Glasgow, G51 1AU; 30 Newlands Road, Glasgow, G43 2JD (together “the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondents, who have a private residential tenancy agreement with the Applicant concerning the Property. It called for a hearing at 10am on 18 November 2024, by teleconference. The Applicant was represented on the call by Mr Stephen Kiernan of Premier Properties. The Respondents were on the call in-person.

The matter had previously called for a CMD on 5 August 2024. Following that, a direction was made for the Applicant to produce a rent account showing the

complete arrears history. The First Respondent was then directed to respond to that setting out any entries he disputed: and to set out the basis for his defence of the application. The First Respondent did not respond to the rent account produced or lodge any written position. He confirmed at the outset of the hearing that he did not dispute the account, and defended the matter on the basis that he was due an abatement of rent from September 2023, due to the condition of the kitchen and bathroom, or at least was withholding rent. Separately, he asserted that it would be unreasonable for an order for his eviction to be granted. He asserted that he had previously shown an ability to reduce the arrears under a previous payment arrangement. He has suffered from poor mental health and receives treatment for this nearby to the Property. He is awaiting a reassessment of his entitlement to benefits which is expected to be completed shortly. That may result in a back payment of up to £4,500 which he would intend to apply to the arrears and would reduce them substantially.

The Second Respondent made written submissions at the outset of this case that she wishes the application to be granted. She has not occupied the Property since September 2022, but remains joint and severally liable for any arrears accrued. She confirmed that her position has not changed.

- Findings in Fact
 1. The Applicant lets the Property to the Respondents in terms of a private residential tenancy agreement with a start date of 1 December 2020.
 2. In terms of the tenancy agreement, rent of £940 is due on the 1st day of each month.
 3. The Respondents made no payment of rent on 1 May 2022 and have been in arrears since that date.
 4. The Second Respondent left the Property on 5 September 2022.

5. On 7 September 2023 and 8 January 2024, the Applicant sent the Respondents emails conforming with the pre-action protocol prescribed by Scottish Ministers for rent arrears cases.
6. On 12 January 2024, the Applicant sent the Respondents a notice to leave, stating that he would rely on Grounds 12 and 12A of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application to the Tribunal to follow.
7. On 12 January 2024, the Respondents were in arrears of rent of £6,270.
8. As at the date of the hearing, the Respondents were in arrears of rent of £10,955.
9. In September 2023, the Applicant's current agents visited the Property and were informed by the First Respondent that there was damage to the kitchen units and floor; that there was damp staining on the kitchen and bathroom ceiling; and that there was black mould in the bathroom.
10. All of these issues did exist and had done since the commencement of the tenancy in 2020. They were of a cosmetic nature and did not significantly impair the Respondents' enjoyment of the Property.
11. Rats and mice have on occasion been present at the Property over the period from September 2023; but the Respondents have not reported this as an issue requiring the Applicant's attention.
12. The Property was not rendered uninhabitable at any point during the period of the arrears.
13. The First Respondent suffers from poor mental health and receives treatment locally to the Property.

14. The First Respondent is unemployed. His entitlement to benefits is currently subject to a reassessment; but there is no prospect that this will be raised to a level where it will cover the whole rent charge.

15. The Second Respondent has not occupied the Property since 5 September 2022.

16. The continuing liability for rent and feeling of being trapped in a tenancy that she does not want is causing the Second Respondent significant anxiety and stress.

- Reasons for Decision

17. There was no disagreement in this case as to the information presented in the rent account regarding payments and charges, so it was clear that the arrears elements of grounds 12 and 12A were made out, unless the Tribunal agreed with the First Respondent that he was entitled to an abatement of rent, or that he was entitled to withhold his rent, due to the condition of the Property. After considering the evidence presented, it concluded that he was not.

18. Even on the First Respondent's own account of the issues with repair at the Property, it was clear that these were not significantly impairing his enjoyment of it. He disputed the description of these as 'cosmetic' that was given by the Applicant's agent and the Second Respondent; but, just by the description he gave himself, it was clear that that was what they amounted to. In addition, there was no dispute that these were present at the time the lease was executed in 2020. On that basis, the Tribunal concluded that they did not render the Property uninhabitable and, thereby, did not constitute a basis for rent to be abated. Given their cosmetic nature, the Tribunal did not consider that they provided a basis for rent to be withheld either.

19. An additional point in relation to repair was the question of the existence of rodents in the Property. The First Respondent said that he had reported this to the local authority, but, crucially, did not do so to the Applicant's agents. He

was therefore not in a position to rely on this either for an abatement of rent, or to withhold payment.

20. Having found that the Respondents had been in arrears for more than 3 consecutive months, and that those arrears amounted to more than 6 months' rent at the date of the notice to leave being given, the only outstanding question was the reasonableness of the order. The pre-action protocol was followed in this case and the arrears are substantial. The Respondents have no realistic ability to address the arrears, or, indeed, the continuing rent charge. It is not reasonable for the Applicant to have to put up with that position. In addition, while there is undoubtedly prejudice to the First Respondent in an order being granted, this is minimal in comparison to the continuing impact this situation is having on the Second Respondent's mental health. For all these reasons the order should be granted on both of the grounds relied on.

- Decision

Eviction order granted.

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.

Nairn Young

Legal Member/Chair

22 November 24

Date