



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/20/0654

Re: Property at 12 Holly Grove, Bellshill, ML4 1EG (“the Property”)

Parties:

Stoneville Investments Ltd, 62 Main Street, Oakham, Rutland, LE15 9LT (“the Applicant”)

Miss Lisa Ellen Crilly, 12 Holly Grove, Bellshill, ML4 1EG (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of part 3 of Schedule 3 of the said Act.

1. Background

1. On 24TH February 2020 the Applicant submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.

A case management discussion was held on 13th August 2020 and the consideration of the application was adjourned to a Hearing which was subsequently arranged for 1st October 2020.

2. A Direction was made in the following terms:

2.1 The Applicant is to produce a complete record of reports it had received from the Respondent with regard to repairs and details of repairs carried out to the Property since the commencement of the Respondent's tenancy.

2.2 The Applicant is to produce an updated rent statement.

2.3 The Respondent is required to provide copies of the documents she sent to the Tribunal on 21st July 2020.

2.4 The Respondent is required to provide a written submission to the Tribunal detailing her reasons for withholding rent and provide copies of any emails, texts or other communication sent to and received from the Applicant's letting agent in connection with repairs and non-payment of rent.

3. The Hearing

This was conducted by audio conference because of the current public health crisis. Mrs Lee Cornes, a director of the Applicant, Stoneville Investments Limited was present and Miss Rhona McCaughey of Love Homes, the Landlord's letting agent was also present.

The Respondent was not present.

The Legal Member of the Tribunal set out the proposed conduct of the Hearing including protocols for the audio conference.

4. Representations and Productions

Both parties had made submissions prior to the Hearing. The Applicant had submitted an updated rent statement showing the arrears of rent as at 28th August 2020 to be £8,050.

The Applicant had also submitted copies of text messages between Love Homes and the Respondent. It had also submitted what it described as a timeline which was contained in an internal email of Love Homes dated 26th August 2020.

The Respondent submitted copies of text messages between the letting agent, a gas engineer and her. She also made written submissions dated 28th August 2020

The Respondent had not submitted details of a bank account where she had placed rental payments.

5. Preliminary Matter

Prior to the Hearing, the Tribunal office received an email from a person who said she was communicating on behalf of the Respondent. The email stated that the Respondent had been admitted to Wishaw General Hospital that morning.

6. First Adjournment

The tribunal adjourned to 11 am to ascertain whether or not further information could be obtained with regard to the Respondent's position.

7. Hearing Re-convened.

It was noted that the person who had made the earlier communication to the Tribunal office which had sent information with regard to the Respondent's absence had intimated that she hoped to get some information from the hospital confirming that the Respondent had been admitted.

Mrs Cornes and Ms McCaughey stated that they had sympathy with the Respondent's position but that, notwithstanding the fact that she was in hospital, the Hearing should proceed and a decision made. Ms McCaughey said that arrears of rent were now £8,625. The position of Ms McCaughey and Mrs Cornes was clear and that was that there was no valid reason for rent to be withheld. Mrs Cornes stated that a determination of the Application should be made because the Respondent had not complied with the terms of the Direction which had been issued after the case management discussion. She made specific reference to no evidence having been lodged by the Respondent in respect of details of a bank account into which she had said that rental payments had been placed. In respect of the Respondent's statement at the case management discussion that she would pay a sum of money in respect of rent, Ms McCaughey said that nothing had been paid despite her having provided bank account details to Ms Crilly and despite her having spoken to her on the matter on more than one occasion. Mrs Cornes said that it was now the sixteenth month where the Landlord had not had payment of rent and that she wanted to recover the Property.

8. Tribunal's consideration of whether or not to adjourn the Hearing.

The tribunal adjourned to consider matters. In determining the matter of whether or not to proceed, it accepted that the Respondent was at hospital. Subsequent to conclusion of the Hearing, the Tribunal was sent a copy of a hospital admission letter which confirmed this. The earlier submission of the letter would not have influenced the Decision which it made since it accepted that Ms Crilly was unable to attend the Hearing because of illness.

The overriding objective of the Tribunal is to deal with proceedings justly. This means that, in considering such matters as whether or not an adjournment is to be granted, members of the Tribunal have to apply judicial discretion and to consider matters in a balanced manner.

In the application before it, both parties had made their respective positions clear. The Respondent had accepted at the case management discussion that there were rent arrears and had not sought to challenge that there were, at that time, more than one month's rent in arrears and that there had been arrears for three or more consecutive months. The Respondent's position was that she had not paid rent because of the condition of the Property. The Respondent had submitted detailed representations with regard to this. The Tribunal considered that these representations, along with the copy of the text messages which the Respondent had lodged, would provide sufficient information to allow the Tribunal to properly have regard to Ms Crilly's position. The Tribunal considered that, if it delayed determination of the application, prejudice would be caused to the Applicant and it therefore did not consider it appropriate to adjourn the Hearing to another date.

9. Findings in Fact

9.1 The Applicant and Respondent are parties to a private residential tenancy agreement dated 19th April 2019.

9.2 The monthly rent is £529.

9.3 There are rent arrears amounting to £8,625.

9.4 Failure to pay rent is not due to any issues the Respondent is or was experiencing in relation to state benefits.

9.5 The central heating system in the Property was not functioning for a period of weeks after 30th September 2019.

10. Documents considered by the Tribunal

10.1 Private residential tenancy agreement dated 19th April 2019.

10.2 Application dated 24th February 2020.

10.3 Rent statement to 25th August 2020.

10.4 Notice under Homelessness etc. (Scotland) Act 2003

10.5 Notice to Leave dated 22ND January 2020.

10.6 Certificate of Service dated 22nd January 2020 in respect of Notice to Leave.

11. The Issues

Parties had agreed at the case management discussion that the Respondent is a tenant in the Property by virtue of the private residential tenancy agreement dated 19th April 2019.

The Respondent had agreed at the case management discussion that there are arrears of rent but had stated that her position is that she had withheld rent because of repairs that were due to the Property and which had not been completed.

Ms McCaughey and Mrs Cornes said that they accepted that there had been an issue with the central heating system and specifically with the boiler which was still under warranty. They said that this had been resolved by November 2019 and that there was no reason why the Respondent should have retained any payments of rent.

12. Respondent's Position.

The Tribunal had regard to the Respondent's written submissions. These state that on a date in September Ms Crilly had returned to the Property to find water coming through the hall ceiling and that she identified that it was coming from the boiler. The representations state that she asked "John" who was working on another house in the street to come to assist. (Mrs Cornes later stated in evidence that her brother John is a gas engineer and carries out work on her behalf).

The representations provide a great deal of detail on what then occurred. They speak to the boiler manufacturer being involved because the boiler was under warranty and the representations state that there was further involvement and that, at various times different parts of the central heating system were not working. The representations state that it took nine weeks for the repair to be completed to the central heating system.

The Respondent's representations also state that damage had been caused to the fabric of the Property and to a carpet and that, despite promises from the letting agent, this had not been attended to.

The representations state that the Respondent was happy to pay half of the rent owed but that, after the case management discussion she had her wages arrested and that, once she has resolved that, she can deal with a payment in respect of rent.

The Respondent's representations state that she would send the Tribunal evidence which she had previously sent and that this would include photographs showing damage , a huge electricity bill incurred as a result of the non-functioning central heating system and a letter from the Bank with regard to the two payments of rent which had gone astray and had been properly paid.

13. Applicant's Position

Miss McCaughey had said at the case management discussion that, as far as she was concerned, the Respondent's decision to withhold rent was not due to

any issue about repairs but rather because of the fact that she did not want to pay the rent in case it went missing.

In evidence, Mrs Cornes said that the house had been completely refurbished before the Respondent's tenancy commenced and that this included a new boiler. She said that the Respondent had paid rent in April and May 2019 and that there had then been an issue because the Respondent insisted that two payments had been made and that, because the Landlord had not received them, had been stolen by Love Homes, the letting agent. Mrs Cornes said that efforts had been made to persuade the Respondent that this was not the case including a meeting being set up at the Royal Bank of Scotland so that the Respondent could hear from the bank that she was wrong in her belief that payments had gone astray. Mrs Cornes said that the Respondent failed to attend the meeting which had been arranged.

Mrs Cornes said that, on 30th September 2019, she was advised that the central heating system was not working and that she had arranged for her brother John, a gas engineer, to investigate. Mrs Cornes said that it was not known why the boiler had failed and that it was unusual because it was only six months old. She said that there had been delay in resolving matters which were complicated because of the warranty position. She said that, to expedite matters, she arranged for John to repair the boiler even though that invalidated her warranty.

Both Mrs Cornes and Ms McCaughey said that it took some weeks for the whole central heating system to be completely restored to functioning order. Ms McCaughey said that the Respondent was not left without heating for any appreciable time. She said that the relationship with the Respondent was good and that the gas engineer and the Respondent would contact each other direct and that is why the text messages lodged with the Tribunal did not reflect the totality of contact. She said that the exchanges she had with the Respondent were mostly by telephone. Ms McCaughey described the Applicant as a responsive landlord who always responded to requests for repairs.

14. Damage to Property

The Respondent had stated that damage caused by the damaged boiler had not been repaired. Ms McCaughey described the damage as minor and that efforts to reinspect and deal with any issues had been thwarted by the Covid-19 issues in respect of access. She said that there was no dampness or mould despite what had been stated in the Respondent's representations.

15. Text Messages

15.1 Both parties lodged copies of text messages. Those lodged by the Applicant disclose a considerable number of messages between the Applicant's letting agent and the Respondent with regard to non payment of rent and difficulties around the rental payments which the Respondent stated had been made and which the Applicant had not received.

15.2 The text messages lodged by the Respondent show that, on 11th November 2019 she had been seeking information on “an update on boiler.” The text messages also show that the Respondent had reported that, after 30th September 2019, the central heating system had not been in full working order. The text messages do not disclose that the Respondent had indicated to the Applicant that she was withholding rent until the heating system had been repaired.

16. Submissions

Mrs Cornes said that she was a responsible landlord and that she understood that it would be difficult for her to recover the money that she was owed but that she wanted to recover her property. She asked the Tribunal to have regard to the fact that the level of arrears of rent was £8,625 and that there had been arrears for almost sixteen months. She argued that there was no valid reason for the rent not be paid.

17. The Law

Private Housing (Tenancies) (Scotland) Act 2016

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month’s rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant’s being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(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.

18. Tribunal's Deliberations and Reasons

18.1 The Tribunal accepted that there are rent arrears. Whilst the Respondent was not present to make representations with regard to the level and, in particular, to the rent statement lodged by the Applicant, she had accepted at the case management discussion that there were rent arrears. The Tribunal accepted the terms of the rent statement showing arrears of £8,050 and the evidence of Mrs Cornes and Ms McCaughey that the current level of arrears is £8,625. The requirements of the 2016 Act were met. The Respondent has been in rent arrears for three or more consecutive months and there is, at the date of the Hearing the arrears are more than an amount equivalent to one month's rent.

18.2 Parties were agreed that there was an issue with the central heating system. It had failed and it took time to be restored to full working order. The Respondent's position was that the time taken for restoration was nine weeks. Mrs Cornes' evidence was that resolution was completed by November and, from looking at the dates in the text messages and in the timeline produced by the Applicant, this would support the view that it took around seven weeks.

18.3 The Tribunal did not consider that it required to determine how long the central heating system took to be resolved. The issue was whether or not the Respondent was entitled to withhold rent, not only until resolution of the issue, but for a considerable period of time after such resolution. Even if the Tribunal accepted that it took nine weeks to completely resolve the central heating issue, it did not consider it appropriate for the Respondent to withhold rent until resolution and the Tribunal could not accept that it would be appropriate for the Respondent not to hand over any rent which she had withheld. The Tribunal considered it significant that the Respondent had failed to produce any evidence that she had retained the rental payments in a separate account. The Tribunal determined that any withholding of rent had to be proportionate to the inadequacy claimed by the Respondent. At the very worst, the central heating system was not fully functioning for nine weeks. The current rent arrears are £8,625. Withholding of such a sum was not proportionate and, in any event, rent should not have been withheld after the issues with the central heating system had been resolved.

18.4 The Respondent's credibility was not enhanced by the fact that she was in arrears of rent from July 2019 and the Tribunal had no evidence produced to it with regard to "missing "rent payments. It accepted the Applicant's evidence that attempts had been made to resolve this issue. The Respondent had also failed to produce evidence that she has retained rental payments in a separate account.

18.5 The Tribunal found the evidence of Mrs Cornes and Ms McCaughey to be credible in general terms and specifically accepted the evidence of Ms McCaughey that any damage caused by the boiler malfunctions to be minor.

18.6 The Respondent had produced no evidence or made representations that her failure to pay rent was as a result of any issue with benefits.

18.7 The Tribunal determined that it was appropriate to grant the application before it.

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.

**Martin J. McAllister, Legal Member
1st October 2020**