



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/20/0828

Re: Property at 52 Howletnest Road, Airdrie, ML6 8AL (“the Property”)

Parties:

Mr Paul McNiven, C/O Atrium Business Centre, North Calden Road, Coatbridge, ML5 4EF (“the Applicant”)

Hing Keung Miu, Ms Kirsty Pulwat Leung, 52 Howletnest Road, Airdrie, ML6 8AL (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted for the property in terms of Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 in favour of the Applicant and against the Respondents. The Decision of the Tribunal was unanimous.

Background

1. By application dated 6 March 2020 the Applicant’s former solicitor applied to the Tribunal for a possession order in respect of the property under Rule 65 of the Tribunal rules and in terms of Grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988.
2. On 19 March 2020, the Tribunal accepted the application under Rule 9 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

3. On 17 August 2020 the Tribunal proceeded to a case management discussion. The Applicant was represented at that time by Ms Gaughan, solicitor of Clarity Simplicity Ltd. Both Respondents were in attendance with Ms Leung the 2nd Respondent speaking on behalf of both of them. The Applicant's solicitor sought an eviction order at the case management discussion. Ms Leung advised that the Respondents wished to defend the application and had paid some £5000 towards outstanding rent arrears which at that time totalled £15,345. Ms Leung indicated that no further rent payments had been made since the Tribunal granted a payment order in respect of unpaid rent in December 2019 because of what she described as further problems with the property. She said there was a leak in the ceiling in the sitting room coming from the bathroom and she had to use buckets to catch the leaking water. She said that the ceiling in the living room had a crack in it. The Tribunal continued the case management discussion to a later date and directed that the Respondents set out in writing why the rent had not been paid, to include details of the legal basis on which they considered they were entitled to withhold rent arrears due in terms of an order for payment, the reasons why ongoing rent due was not paid from 16 December 2019, the date that the withholding of rent was intimated to the landlord, together with evidence that the rent money and rent arrears were in a separate account pending any repairs being carried out. The Respondents were also required to lodge a list of repairs together with photographs and a note of when each item of repair arose and when the landlord was notified about each item of repair. They were also asked to lodge evidence of the payment of £5000 which they had said they had made towards the rent arrears. The Applicant was required at that time to lodge a copy of the Tribunal's written decision in respect of the payment order.
4. The next case management discussion took place on 9th October 2020. On this occasion Ms Gaughan, the Applicant's solicitor was in attendance on his behalf and Ms Leung, the 2nd Respondent attended and represented herself and the 1st Respondent Mr Miu. Since the first case management discussion additional productions had been lodged with the Tribunal. The Applicant had lodged a statement from a Nationwide Building Society Current Account. The Respondents had lodged 2 photographs of what were said to be entries from a bank account. The parties were in dispute as to whether £5000 had been paid towards the rent arrears. Ms Leung indicated that she accepted in terms of the Tribunal's payment order that the arrears connected to the payment order required to be paid. She said the first instalment of £5000 had been paid but the monthly payments of £500 towards the arrears could no longer be afforded. Ms Leung further indicated that rent since December 2019 had not been paid as she said there was a repair which had not been dealt with. She said that the leak in the bathroom had occurred again after a previous repair. She referred to the photographs she had lodged which she said showed a line in the ceiling and indicated there was a leak from the bathroom into the living room when it was used. She said that this had been intimated to the Landlord by means of a letter in January 2020 sent by a Mr Hooke, an environmental health officer. She said that some of the rent had been put aside in an account belonging to the Respondent Mr Mui and that she could produce a statement confirming this. The Applicant's solicitor did not accept that a repair had been intimated nor that rent was being withheld pending such a repair. The Tribunal

fixed a Hearing on these issues and issued a Direction to the Respondent to lodge evidence showing when the need for repair was made known to the landlord, when he was advised that the rent was being withheld due to this repair and evidence showing where the rent had been kept aside pending the repair. Both parties were requested to lodge additional productions and witnesses at least 2 weeks before the Hearing. Ms Leung intimated that she would attend the Hearing but that Mr Mui would not attend. She also indicated that Mr Hooke, the Environmental Health officer might also attend on behalf of the Respondents. Ms Gaughan advised that the Applicant would attend and give evidence on his own behalf.

Hearing

5. The Hearing took place on 20th November 2020 at 10am by teleconference. The Applicant attended on his own behalf and was no longer represented, but represented himself. Neither of the Respondents attended nor had they complied with the Direction of the Tribunal to lodge evidence showing when the need for repair was intimated to the Applicant landlord, when the alleged withholding of rent pending repair was made known to him and evidence showing that the rent had been kept aside pending the repair. The Tribunal understood that the date of the teleconference Hearing had been imitated to the Respondents on 21st October 2020 and that the notification had been signed for by Ms Leung. The Tribunal was therefore satisfied that the Respondents were aware of the Hearing date and that the terms of Rule 24 of the Tribunal rules had been satisfied in respect of reasonable notice of the Hearing. The Applicant requested to proceed in the absence of the Respondents and this request was granted since intimation to parties had taken place in terms of the Tribunal rules of procedure.
6. At the hearing the Tribunal had sight of the application, a paper apart, Notices to quit, Forms AT6, an execution of service of all of these notices by sheriff officer, a payment order of first-tier Tribunal, Notice in terms of section 11 of the Homelessness etc Scotland Act 2003, an email delivery receipt for that notice, together with statements of rent arrears, e mails from the Applicant, a re inspection schedule at the property, e mail exchanges between the applicant and Mr Alan Hooke and notifications from TES electrical contractors to both the Applicant and the 2nd respondent. These productions had all been lodged by or on behalf of the Applicant. On behalf of the Respondents there had been previously lodged at the case management discussions, 2 photographs of what appeared to be a ceiling at the property and photographs of entries in what was said to be a bank account.
7. The Applicant gave evidence on his own behalf. He referred to 2 other cases which had been before the first-tier Tribunal namely the payment order case which had been previously referred to and a repairing standards case. He indicated in relation to the repairing standards case that all works had been completed and he had lodged a re inspection schedule dated 14th November 2019. He indicated that in respect of the repairs required at the property he had required to use 3 contractors. The 1st 2 contractors he said had told him that said that the tenants were sabotaging repairs at the property. A 3rd

contractor attended and videoed the final repair which had been carried out in September 2019. The Applicant indicated that early in 2020 he had spoken to Alan Hooke, an environmental health officer at Lanarkshire Council. He had called Mr Hooke and he (Mr Hooke) had mentioned during the call that the tenant had mentioned a leak at the property. Mr Hooke had told the Applicant that there was no evidence of this leak when he had visited the property. They had discussed the fact that the Applicant needed access to the property in respect of a gas safety check and after several attempts to get access for this purpose there had been an email exchange between the Applicant and Mr Hooke about applying to the First Tier tribunal for access to the property for the gas safety check to be carried out. He referred to letters which he had lodged from TES electrical contractors which pointed, he said, to difficulties which had occurred when that firm had tried to access the property in 2018 to effect electrical repairs, including the installation of new mains wired smoke alarms and heat detector.

8. The Applicant indicated that the tenants had, according to Mr Hooke, mentioned the ceiling and a leak in the living room ceiling but he said that Mr Hooke had advised him that he had found no evidence of the leak on his visit.
9. The Applicant stressed in his evidence that the only discussion around any matter needing attention at the property in 2020 was the issue of access for a gas safety check and he pointed to emails in which this was discussed. These emails were dated 11th and 14th February 2020. When asked regarding the photographs lodged on behalf of the Respondents before the case management discussion on 9th October 2020 which Ms Leung had suggested was evidence of a line in the ceiling where there was a leak from the bathroom, the Applicant suggested that he could not know when these photographs were taken as they did not have a date on them and they could be old photographs taken at a time when there had been issues with the bathroom at the property which had he said been fully repaired in 2019. He did not accept that these were evidence of a leak requiring repair in 2020.
10. The Applicant was of the view that the tenant Respondents had over a period of time allowed of arrears of rent to accrue at the property. He advised that during the payment order proceedings he had been told by a contractor that the Respondent Mr Miu had said that they had no intention of paying rent that was due at the property. He also indicated that during the payment order proceedings Ms Leung had exhibited evidence of the rent arrears being kept in a bank account, but when all the repairs at the property that were required were completed in September 2019, when the Applicant sent an up-to-date rent statement, he said that the money no longer appeared to be forthcoming and the Tribunal had granted a payment order on the basis that Ms Leung said she couldn't pay the arrears in full. The Applicant was asked if he had checked references for the Respondents when they entered into the tenancy agreement and he indicated that he had had no difficulty with his tenants until 2018 when the issue of the repairs was raised. He also indicated that he had been advised that Ms Leung wanted to pay the rent but Mr Miu would not let her. He said that in 2018 when a couple of rent payments had been missed Ms Leung had blamed this on her partner Mr Miu.
11. The Applicant indicated that throughout the time that the Respondents had been at the property the rent had been paid via a business. He believed this to be a Chinese food takeaway business called "Yummy Yummy". He

understood that the Respondent Ms Leung had had a job with Mears Care, a care company, but had not been kept on after her probation period and was subsequently working in the takeaway business. When asked as to the question of whether the arrears of rent had accrued due to any failure or delay in the payment of benefit to his knowledge, the Applicant was clear in his evidence that this was not the case. He described that he had approached the universal credit section of the benefits agency to see if he could have payments of the rent arrears made to him directly. This he said had been unsuccessful, indicating that the benefits agency he had approached appeared to have no record of the Respondents. He also stated that at one point the Respondent (Ms Leung) had approached him about claiming housing benefit and having it paid directly to the Applicant as a way of addressing the accumulating rent arrears, which he said he had refused as this would be wrong. The Applicant appeared to be firmly of the view that the Respondents had the means to pay the rent at the property but were not paying and falsely suggesting that the rent was being withheld due to required repairs which the Applicant said he knew nothing about and did not believe existed.

12. The Applicant gave evidence regarding the amount of rent arrears and the issue of whether there had been any payment had towards the arrears which had accrued at the time that the payment order had been made by the First Tier Tribunal in December 2019. The payment order had been produced by the Applicant's former representative in relation to this application and the Tribunal was aware that the Respondents had been due to pay the sum of £5000 by 23 December 2019 as part of the order made in that case. In the course of the case management discussion on 9th October 2020 the Respondent Ms Leung had produced pages of what she said were entries in a bank account showing that £5000 had been paid to the Respondent. The Applicant gave evidence on this point at the Hearing. His position was despite what appeared on the entries produced by the Respondents he had not received any payment of arrears from the Respondents. He produced his own bank statement and confirmed that a payment of £5000 which appeared to have been transferred into his account on 30 December 2019 had come from another account. He indicated that he often transferred money from one account to another to cover payments which he required to make. He noted that the suggested payment of £5000 was marked "FPO" and the Applicant said he was familiar with receiving this type of payment. He said he was aware that this type of payment would have reached his bank account within two hours. He said that he had received no such payment.
13. The Applicant's position was that all of the rent arrears set out in the up-to-date statement of rent arrears were owed to him by the Respondents and that these totalled some of £16,830. This included the sum of £11,385 in previous rent arrears which had been the subject of the Tribunal's payment order granted in December 2019. The Applicant explained to the Tribunal that he had a number of properties which he rented out. He said that 11 of these properties were currently rented of the 27 in his portfolio. He explained that tenants often moved on and at this time there were a lot of vacant properties. He explained that this property had cost him a significant amount of money, some £27,000 in terms of installing two new bathroom suites at the property and because a large sum of rent had not been paid.

14. The Applicant's final position to the tribunal was that he had not been notified of any requirement for a repair at the property in either 2019 or 2020 by the Respondents or any person on their behalf. Repairs which he had referred to in 2019 were as a result of an earlier problem with a leak in the bathroom which he said had been fully repaired. Further he had not at any point he said, been notified in 2020 that the Applicants were withholding the rent which was due following the payment order being granted by the Tribunal because of any outstanding repair.

Findings in Fact

15. The parties entered into a tenancy agreement at the property with effect from 30 June 2012 for a period of six months.
16. After the first term of six months the tenancy agreement renewed on a six monthly basis in the absence of action by either party to bring it to an end.
17. The tenancy agreement stated that the monthly rent payable was £500 but this at some stage during the tenancy was reduced to £495 per month. The statement of arrears lodged by the Applicant covering a period from February 2018 up until November 2020 showed a monthly rent due of £495.
18. Notices to quit the property in proper form and dated 26 April 2019 were served on the Respondents by Sheriff Officer on 30 April 2019 indicating that vacant possession of the property was required with effect from 30 June 2019, an end date in terms of the rolling tenancy agreement.
19. The contractual tenancy between the parties was brought to an end with effect from 30 June 2019 and it continued as a statutory tenancy in terms of the Housing (Scotland) Act 1988.
20. Forms AT6, the notices required in terms of section 19 of the Housing (Scotland) Act 1988 were served on the Respondents on 5 February 2020 by Sheriff officers. These notices set out the grounds under which a possession order was being requested i.e. Grounds 8, 11 and 12 of Schedule 5 of the Act, and set out in detail the amount of arrears which had accrued as at the date of the services of the notices.
21. A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was served on the local authority in respect of this tenancy.
22. The Applicant obtained a payment order in the sum of £11385 from the first-tier Tribunal in respect of some of the rent arrears of the property on 16 December 2019.
23. In terms of that order the sum of £5000 was to be paid by the Respondents by 23rd December 2019.
24. The sum of £5000 towards the arrears which formed part of the amount of arrears which were the subject of the payment order was not paid to the Applicant by the Respondents in December 2019 or on any date since that date.
25. No rent was received by the Applicant at the property from the Respondents after the payment order was granted by the first-tier Tribunal and the Respondents have paid no rent for the property since early in 2018.
26. The arrears of rent due accrued at the property since early in 2018 amount to £16830.
27. At no time after the making of a payment order of the first-tier Tribunal in December 2019 did either of the Respondents either directly or through

another person intimate to the Applicant that a repair was required at the property in particular that a new leak from the bathroom into the living room required attention.

28. At no time after the making of a payment order by the First Tier Tribunal in December 2019 did the Respondents advise the Applicant that they were withholding rent due in respect of the tenancy as a result of any new repair that was required.
29. At no time after the making of a payment order by the First Tier Tribunal in December 2019 did the Respondents advise the Applicant that they had set aside outstanding rent in a bank account pending completion of a repair to a leak in the bathroom or any part of the property.
30. The sum of £16,830 in rent arrears are due by the Respondents to the Applicant in respect of their tenancy of the property.
31. The rent arrears which have accrued at the property are not due to any failure or delay in the payment of any relevant benefit.

Reasons for Decision

32. Although the Respondents did not attend the hearing in this matter they had set out their position in relation to the arrears at two previous case management discussions. Ms Leung the 2nd Respondent had attended on their behalf and indicated that they accepted the rent arrears which were the subject of the payment order of the first-tier Tribunal made in December 2019 were due to the Applicant. The issue around these arrears as far as the Respondents were concerned appeared to be whether an initial sum of £5000 had been paid to the Applicant and that remaining instalments of £500 per month due in terms of the order was said not to be affordable by the Respondents.
33. The Tribunal considered the evidence around the payment of £5000 towards the rent arrears which the Respondents said they had made. This was denied by the Applicant. The Tribunal did not accept the evidence which had previously been intimated by the Respondents in the form of copies of what was said to be entries in a bank account which were considered at the Hearing.
34. It was noted that the entries were on a sheet which had no heading of any bank or building society or any account holder. In addition the payment of £5000 which appeared to have left the account on 24 December 2019 appeared to have the effect of reducing the balance in the account by some 32 pence. The Tribunal preferred the evidence of the Applicant in this matter who was keen to recover the rent arrears but gave clear and credible evidence to the effect that he had not received any rent from the Respondents for a period in excess of two years. There appeared to be no reason why the Applicant would be untruthful as to the recovery of substantial rent arrears which he was keen to recover.
35. The other matter at issue in this Application was the question of the rent Arrears which had accrued since the making of the payment order by the First-Tier Tribunal in December 2019. The second Respondent Ms Leung at

the case management discussion on 9th October 2020 had intimated that the rent was being withheld due to a requirement for a repair as a new leak had apparently occurred from the bathroom into the living room. The Applicant gave evidence to the effect that he was not aware of the need for any such repair nor indeed that rent was being withheld pending completion of such repair or where the rent was being held for that purpose. The Applicant accepted that a local environmental health officer had intimated to him that the tenants had said there was a leak from the bathroom at the property early in 2020 but that he had not said seen any evidence of this at his visit to the property. The Tribunal was satisfied that there was no credible evidence before it to suggest that the Applicant had been made aware that a repair was required at the property in 2020 or that rent payments due at the property after the making of the payment order in December 2019 had been lawfully withheld. The Tribunal was also satisfied that the Applicant had not been advised that the rent was being held in a bank account pending the repair of any leak from the bathroom in 2020. The Tribunal accepted the evidence of the Applicant on all of these points.

36. Accordingly the Tribunal was satisfied that substantial rent arrears were due by the Respondents in respect of their tenancy at the property and had simply not been paid by the Respondents.
37. The Tribunal was satisfied that substantial arrears of rent having accrued at this property that the requirements of the possession grounds set out in Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act were met in full. The required notices had been served on the Respondents timeously and in appropriate form, bringing the contractual tenancy to an end. Forms AT6 in appropriate terms had been properly served on the Respondents and a Section 11 notice had been sent to the local authority. The Tribunal was satisfied that a possession order in terms of Ground 8 of the 1988 Act required to be made and in terms of its discretion found that it was appropriate to make an order under Grounds 11 and 12 of Schedule 5 of the 1988 Act.

Decision

The Tribunal granted a possession order for the property in terms of Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) 1988 in favour of the Applicant and against the Respondents.

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.

Valerie Bremner

Legal Member/Chair

20.11.20_____
Date