



Decision (With Statement of Reasons) of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/20/0381

Re: Property at 47 Loch Shin, East Kilbride, G74 2DH (“the Property”)

Parties:

Mrs Carina Doherty, 1 Law Roundabout, East Kilbride, G74 4GP (“the Applicant”)

KKG Property Management & Letting, 6 Inch Garvie, East Kilbride, G74 2JY (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent shall pay the sum of £2,000 to the Applicant.

Background

This is an application for damages for alleged wrongful ejection under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules).

The Tribunal had the following documents before it:

1. Application received 5 February 2020;
2. Short Assured Tenancy Agreement (**Tenancy Agreement**) undated;
3. Texts between the Parties;
4. Photographs of the Property;
5. Written Submissions from both Parties dated 13-16 July 2020;
6. Affidavit of Applicant and letter from Solicitor.

The Applicant had been substituted as a Party to the proceedings following the death of the original Applicant (her son) by Decision under Rule 32(3) of the Tribunal dated 22 July 2020.

Hearing on 7 October 2020

The case had called for a Hearing by conference call on 7 October 2020. Both Parties participated. The Applicant represented herself and the Respondent was represented by one of its Directors, Mr K Godfrey.

The Tribunal identified a preliminary issue at the outset. The Applicant was substituted in respect of her deceased son who had been the original Applicant. In light of that the Tribunal enquired whether or not the Applicant had been appointed Executor to her late son's estate. It appeared that she had not and that her son had not left a Will. As such the Tribunal needed confirmation of the position, in particular, regarding who would be legally entitled to any award (if one was made).

Given the case was at Hearing stage the Parties agreed to proceed with the Hearing and then for the confirmation of the position to be produced at a later date.

The Tribunal had adjourned to consider this. After reconvening the Tribunal determined that it was in accordance with the overriding objective to proceed.

The Tribunal then heard evidence from both Parties and adjourned (reserving its Decision) until such time as the position had been confirmed.

The Tribunal subsequently received correspondence from the Applicant's Solicitor and an affidavit from the Applicant confirming the residuary beneficiaries under the laws of intestacy in Scotland.

The Tribunal was accordingly satisfied that it could proceed to issue a Decision in this matter.

Summary of Evidence

The Parties' main evidence was contained in the Written Submissions produced in advance of the Hearing.

Applicant

The Applicant's position was that her son (**Mark**) had been the tenant of the Property since 15 February 2019. There was a Tenancy Agreement which was undated.

The Applicant had discussed and agreed that Mark would become the tenant with the Respondent. This was confirmed by the Parties' submissions and also the text exchanges between the Parties.

The monthly rent was £400 and Mark was to pay £450 with the £50 being a contribution towards the deposit.

Mark fell into significant arrears (in excess of £2000 towards the end of the tenancy). He had issues with his mental health, work and benefits.

The Applicant had, as a concerned mother, sought to intervene and try to resolve matters.

By the beginning of January 2020, the Respondents had text Mark issuing ultimatums regarding the rental arrears. Texts were produced and referred to.

It was agreed between Mark and the Respondents that he would vacate the Property on 20 January 2020. No Notice to Leave or formal eviction documentation had been served.

On 7 January 2020 Mark had returned to the Property and found the locks changed. He had contacted the Respondents, explained all his clothes, medication, passport, driver's licence and bank cards were in the Property. The Respondents refused him access.

Mark threatened to break the lock to get access but was unable to gain entry.

The Respondents had reported his attempts to break the locks to the Police and he was subsequently charged with vandalism.

Mark did not gain access to get his belongings until 25 January 2020 despite attempts to secure access earlier. Access was obstructed by the Respondents.

The Applicant had text the Respondents informing them that the eviction was illegal, she had involved Shelter and reported it to the Police. The Respondents position was that this was a civil matter.

The whole incident had been extremely stressful for Mark. He had not had access to his clothes or belongings for 19 days. This had a significant detrimental impact on his mental health.

Respondents

The Respondents' position was that they had been misled by the Applicant into renting the Property to Mark. They had done so because of her representations and due to their relationship with her.

The rent was £400 per month – not £450.

Mark had fallen into significant rental arrears and the Applicant had intervened on his behalf with various representations that she would get the arrears sorted out.

The Respondents had come to the end of their tether and accept that they changed the locks on 7 January 2020. Police were involved following Mark's attempts to break in due to fear of damage to the Property.

The Respondents had co-operated with Mark as evidenced by the text exchanges produced following the eviction of 7 January 2020 to facilitate access for him to recover his belongings. Access meetings had been cancelled by Mark.

Mark had ultimately gained access on 25 January and retrieved his belongings.

By the end of the tenancy the Respondents had sustained a loss of £4,325 (£2,900 of which was rent arrears) all as detailed in the schedule produced by them with their written submissions.

Decision and Reasons

The Tribunal considered the oral and documentary evidence before it and, in so far as was material, made the following findings in fact:

1. Mark let the Property from 15 February 2019 until 7 January 2020;
2. An undated tenancy agreement had been entered into;
3. The monthly rent was £400;
4. As at January 2020 there were in excess of £2,000 rent arrears;
5. Various attempts had been made to secure payment of/reduce the arrears;
6. Mark had agreed to vacate the Property on 20 January 2020;
7. The Respondents changed the locks (without notification) to the Property on 7 January 2020;
8. Mark had attempted to force access to the Property on 7 January;
9. Police had been involved by the Respondents and had charged Mark with vandalism;
10. Texts were exchanged between Mark and the Respondents in attempts to gain access to retrieve his Property;
11. Access was offered on a number of occasions and cancelled by Mark;
12. Access was eventually obtained on 25 January and Mark's belongings retrieved;

There was no dispute that the Respondents had unilaterally and without notification changed the locks to the Property on 7 January 2020. This action had taken place due to anger and frustration on their part at the arrears and their belief that the Applicant had misled them.

Whilst that may constitute mitigation it by no means provides a lawful defence to an action for damages for wrongous ejection at common law.

The Applicant had not sought statutory damages in respect of unlawful eviction.

The Tribunal considered that it was agreed Mark would vacate the Property on 20 January 2020. He had been deprived of occupation of the Property for 13 days. He had been prevented from organising an orderly exit from the Property. He had also been denied access to his belongings and occasioned significant upset and distress as a consequence of the Respondents' peremptory actions.

The Tribunal accepted the relationship had clearly broken down and that feelings were running high but did not consider that to excuse the actions of the Respondents in the circumstances.

Furthermore, there was benefit to the Respondents in obtaining recovery of possession of the Property earlier than they would have had they adhered to the agreement they had reached with Mark or had to go through a lawful process.

The Tribunal accepted the Respondents' evidence (which was corroborated by the text exchanges) to the effect that they had attempted to co-operate with Mark to facilitate access to the Property to retrieve his belongings. Access had been delayed due to Mark cancelling.

The Tribunal found that the Respondents had wrongously ejected Mark from the Property on 7 January 2020.

It then fell to the Tribunal to consider what damages (if any) should be awarded in respect of the wrongous ejection. The Tribunal noted the statutory regime (under Sections 36 and 37 of the *Housing (Scotland) Act 1988*) in respect of unlawful eviction was not relevant in this regard. The Applicant had also not sought a remedy under section 59 of the Act for a wrongful eviction order in terms of which the Tribunal could have awarded up to 6 Months' rent as compensation to the Applicant.

The Tribunal accordingly considered that a fair and reasonable award in respect of damages should be £2,000. The Tribunal arrived at this determination taking into account the obvious distress and inconvenience occasioned by Mark as a consequence of the wrongous ejection (in respect of which it awards £1,000) and the balance for the wrongful deprivation of occupation and peaceful enjoyment of the Property and access to his Property and belongings (in respect of which the Tribunal also awards £1,000).

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.

A. Strain

12 November 2020

Legal Member

Date