

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/EV/23/0835

Re: Property at 141 Charles Crescent, Bathgate, EH48 1JJ (“the Property”)

Parties:

Ms Katarzyna Stradowska, 11 Hollyhock Glade, Livingston, EH54 9QJ (“the Applicant”)

Ms Marlena Wasilewska, 141 Charles Crescent, Bathgate, EH48 1JJ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 11th June 2021, the Applicant let the Property to the Respondent.
2. The start date of the tenancy was 11th June 2021.
3. The rent payable is £650.00 per calendar month, payable in advance.
4. The Property was purchased by the Applicant with the assistance of a standard security. The loan funds were provided by Bank of Ireland and repayments in relation to the standard security required to be made at the rate of £340.00 per month.

5. The Respondent fell into arrears of rent. As at the date of the application to the Tribunal – 14th March 2023 – arrears of rent amounted to £3,250.00. As at the date of the case management discussion arrears of rent amounted to £6,350.00. The last payment of rent by the Respondent was on 14th September 2022.
6. A notice to leave was served upon the Respondent on 6th December 2022. The notice to leave stated the ground of eviction relied upon was that the Applicant intended to sell the Property to alleviate financial hardship - ground 1A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
7. On 14th March 2023, the Applicant presented two applications to the Tribunal, one seeking an order for eviction (EV/23/0835), the other seeking an order for payment in relation to rent arrears (CV/23/0836)
8. The application in relation to the eviction order sought to rely upon grounds 1A and also ground 12 (rent arrears) of schedule 3 to the 2016 Act;

THE CASE MANAGEMENT DISCUSSION

9. The Applicant attended case management discussion by teleconference. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
10. In relation to the rent arrears, the Applicant advised that the amount of arrears were now £6,350.00. She moved the Tribunal to amend the application and to grant a payment order in that amount. In the absence of any appearance by the Respondent the Tribunal allowed this amendment and granted an order for payment in that amount.
11. In relation to the application for eviction, the Applicant confirmed that the arrears of rent now amounted to £6350.00. No rental payments have been made since September 2022. The Applicant understands the Respondent is still resident at the Property.

12. Separately, the fact that rent is not being paid is causing financial hardship to the Applicant such that she now intends to sell the Property to alleviate that hardship. Given that the Tribunal requires to consider whether it is reasonable to grant an eviction order the Tribunal made further enquiry of the Applicant.
13. The Applicant advised that she is self employed as an energy consultant. but does not have a significant income. In the last financial year she earned only £6000.00. The rental income from the Property, therefor, is of significance to her.
14. The Property is subject to a standard security in favour of the Bank of Ireland. Approximately £40,000.00 in total is outstanding in relation to the security. The monthly mortgage payment is £340.00. The rental payments are required to enable the mortgage payments to be met. To comply with her obligations as a landlord the Applicant also requires to make payment to have the gas appliances serviced and an appropriate certificate issued on a yearly basis. That costs in the region of £100.00. She requires to have electrical appliances inspected and an appropriate certificate issued. That is at a cost of £300.00 every five years.
15. The Applicant has required to use her savings to make payment of the mortgage in relation to the Property and also for her general living expenses. Her savings amounted to £20,000.00 3 years ago. They now amount to £2,000.00. They are being depleted on an ongoing basis and will soon be completely expended.
16. The Property is believed to have a value of approximately £120,000.00. There is, approximately £80,000.00 of equity within the Property.
17. The Applicant owns one other property which she rents out. That property is in Mid Calder. The rent due on that Property is £550.00 per month. At present, the rent on that property is being paid regularly to the Applicant. That property is also subject to a standard security. The mortgage payments for that property are currently £300.00 per month but are expected to increase having regard to the recent increases in interest rates announced by the Bank of England. While the rental payment for that property exceed what is required to pay the mortgage, it is still insufficient to cover the mortgage due on the Property which is the subject of this application.
18. The Applicant cannot afford to make payment of the mortgage for the Property from her income. Her savings are almost depleted. She is suffering financial hardship as a result of the failure of the Respondent to make payment of rent. She wishes to sell the Property to alleviate that hardship.

19. In relation to the Respondent, the Applicant understands that she lives at the Property with her son who is aged 14 or 15 years. It is understood he attends Bathgate Academy for his schooling. The last time the Applicant spoke to the Respondent she was working with a computer company. The last time she spoke to her, however, was the beginning of March 2023. The Respondent advised the Applicant that she intended to vacate the Property but she has not done so. The Applicant believes that the Respondent has various personal problems and is on sick leave from work at present. It is understood that she is receiving £500.00 per month by way of sick pay. That amount, however, is insufficient to meet the rental payments in any event.
20. The Applicant is not aware of any other issues affecting the Respondent. The Applicant is not aware of any reason for rent being withheld, other than the fact that, it appears, the Respondent is not receiving sufficient pay to make payment of rent in the first place. The Applicant advised that when the Property was first rented the Respondent moved into the Property with her partner. They have now separated and the Respondent no longer has the financial support of her partner either.

FINDINGS IN FACT

21. The Tribunal found the following facts to be established:-
- a) By lease dated 11th June 2021 the Applicant let the Property to the Respondent.
 - b) The rent payable is £650.00 per calendar month.
 - c) The Property is subject to a standard security in favour of the Bank of Ireland. Monthly mortgage payments require to be made by the Applicant to the bank.
 - d) The Respondent has not made payment of rent since September 2022. As a result, the Applicant has required to use her personal savings to make payment of the mortgage. The personal savings of the Applicant have been significantly depleted as a result and will soon be completely expended.
 - e) The Applicant is suffering financial hardship.
 - f) The Applicant wishes to sell the Property, to discharge the sums due to Bank of Ireland and thereby alleviate financial hardship.
 - g) As at the date of the case management discussion, arrears of rent amounted to £6,350.00. That sum is due, resting and owing by the Respondent to the Applicant.
 - h) It is reasonable in the circumstances that an order for eviction is granted.

DECISION

The Tribunal grants an order against the Respondent for eviction of the Respondent from the Property.

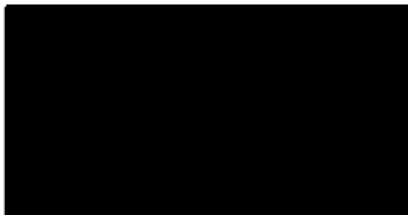
Order not to be executed prior to 12 noon on 23 August 2023

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

10 July 2023

Date