



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/23/0352

Property: 149 Craigie Drive, Dundee DD4 7NU (“Property”)

Parties:

Lucy Forbes, 109 Strathyre Avenue, Broughty Ferry, Dundee DD5 3GN (“Applicant”)

Shannon Thompson, 149 Craigie Drive, Dundee DD4 7NU (“Respondent”)

Tribunal Members:

**Joan Devine (Legal Member)
Gordon Laurie (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 17 April 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 30 September 2022 ("Notice to Leave"); copy email dated 30 September 2022 attaching the Notice to Leave; rent statement as at 29 September 2022; rent statement as at 31 January 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 1 February 2023 and communications to the Respondent regarding arrears dated 29 June, 4 August and 7 September 2022.

A case management discussion (“CMD”) took place before the Tribunal on 16 May 2023 by teleconference. Reference is made to the note of the CMD. A continued CMD was fixed. In advance of the continued CMD the Applicant lodged an updated rent statement as at 29 June 2023 indicating arrears of £1634.18. The Respondent lodged

a letter dated 7 June 2023 from Dundee City Council regarding a Discretionary Housing Payment. The letter stated that a payment of £1101.92 would be made direct to the Applicant on 12 June 2023 with a further £115.40 being paid on 19 June 2023. Thereafter £115.40 would be paid direct to the Applicant every 4 weeks. The rent statement lodged by the Applicant showed the payments being made on 12 and 19 June 2023.

Continued CMD

A continued CMD took place by conference Call on 12 July 2023. The Applicant was in attendance. There was no appearance by the Respondent.

The Applicant told the Tribunal that the Respondent continues to reside in the Property with her two children. She said that she had been in recent contact with the Respondent. She understood that the Respondent now has a job although the contract is temporary. The Tribunal noted the letter from Dundee City Council which indicated that the rent was now being covered in full by a combination of Universal Credit and Discretionary Housing Payment. The Applicant confirmed that was correct. She said she remained concerned about the arrears. The Tribunal noted that the arrears statement recently lodged did not show a payment of £625 on 12 December 2022 which was shown on the arrears statement lodged with the Application. The Applicant took time to review her paperwork and concluded that the inclusion of £625 in the original arrears statement may be a mistake but she would need to investigate further. The Tribunal noted that if a payment of £625 had been missed from the updated arrears statement that would bring the arrears down to £1009.18.

The Tribunal asked the Applicant if she was insisting on the Application. The Applicant said that she did not know if the Respondent now having a job would mean that the benefits being paid would reduce and she did not know when the Discretionary Housing Payment would come to an end as it was in place to allow the Respondent to find alternative, cheaper accommodation. The Applicant also said that the Respondent had said in a message in June that she could pay £50/ month towards the arrears but nothing had been received as yet. The Applicant said that in light of these issues she was insisting on the Application.

The Tribunal asked about the payment towards the arrears of £50 / month and whether that was to be paid direct from the Respondent. The Applicant said it was to be a deduction from the Respondent's Universal Credit. The Tribunal noted that it required to determine whether it was reasonable to grant an order for eviction and therefore had to consider the impact of an order for eviction on the Respondent who lived in the Property with two young children. The Tribunal asked the Applicant what impact there would be on the Applicant if the Tribunal refused to grant an order for eviction. The Applicant said she was happy for the Respondent to continue to live in the Property

but she had hoped the outcome of the CMD would be for a payment plan to be put in place to address the arrears. The Applicant suggested she contact the Respondent to discuss a payment plan and the CMD could be continued to a later date to review the situation.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 17 April 2022 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 30 September 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 31 October 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 1 February 2023.
5. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
6. The Respondent is in receipt of Universal Credit and a Discretionary Housing Payment which cover the monthly rent.
7. The Respondent lives in the Property with two young children.

Findings in Fact and Law

1. In all of the circumstances, it would not be reasonable to grant an order for eviction.

Reasons for the Decision

The Tribunal determined not to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states:

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

The Tribunal considered the statements of rent arrears provided and determined that the ground for eviction had been established.

The Tribunal then considered the question of reasonableness. The Respondent is now in receipt of a Discretionary Housing Payment. When this is combined with the Universal Credit, the rent is covered. In those circumstances the arrears are under control. Depending on whether a payment of £625 shown on the arrears statement lodged with the Application was in fact made, the arrears may be little over £1000. The Respondent lives in the Property with two children. At the CMD on 16 May 2023 the Tribunal had been told that the children were aged around 4 and 6. The Applicant had suggested a continuation of the CMD to allow matters to be reviewed. It is not however the function of the Tribunal to monitor payment plans.

In all of the circumstances, the Tribunal determined that it was not reasonable to issue an eviction order.

Decision

The Tribunal refuses the Application.

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.

Joan Devine

**Joan Devine
Legal Member**

Date: 12 July 2023