



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/EV/22/2931

Re: Property at Lawn Park Cottage, Newliston, Kirkliston, EH29 9EB (“the Property”)

Parties:

Mrs Caroline Maclachlan, Newliston House, Newliston Estate, Kirkliston, EH29 9EB (“the Applicant”)

Mr Sean Seymour, Miss Philippa (otherwise Phillippa or Phillipa) Meldrum, Lawn Park Cottage, Newliston, Kirkliston, EH29 9EB (“the Respondent”)

Tribunal Members:

David Preston (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be refused.

Background

1. Following a Case Management Discussion (CMD), the tribunal issued a Note dated 18 January 2023 together with a Direction to the parties. In the Note the tribunal stated that it was satisfied that the respondents had breached condition 21.4.2 of the Tenancy Agreement but sought arguments, representations and evidence as to whether it was reasonable for an eviction order to be granted. The Direction required the parties to, inter alia, submit such information as they wished to this end.
2. By email dated 16 March 2023 the applicants’ agent submitted an email together with a Note of Argument and further productions.

3. The respondents did not submit any information in response to the Direction. They said that they had received neither the Note nor the Direction. The tribunal established that the Note and Direction had been sent to the first named respondent by recorded delivery mail on 23 January 2023 and to the second named respondent by email dated 23 January 2023. A Royal Mail delivery receipt dated 24 February 2023 for the recorded delivery item was available to the tribunal which bore to be signed for by "Seymour". However, the signature in the proof of delivery box bore no relation to such a name.
4. The tribunal decided to proceed with the hearing on the basis that the respondents were present on the telephone and were able to provide the information orally.

Hearing

Respondents' Position

5. The first named respondent said that although he had not received the documentation, on the basis of the notes which he had taken at the CMD, he had attempted to recover his medical records which had not proved to be possible due to the volume and he had been advised to inspect them in person rather than have them copied and sent to him. He further explained that his GP had told him to ask the tribunal to obtain whatever information it required direct.
6. The first named respondent re-iterated the medical problems he was facing as detailed in his letter to the applicant dated 12 November 2021. He had suffered serious ill health over a period of approximately 10 years and had consulted various GPs and specialists and undergone multiple operations. He had been diagnosed with Vasculitis Disease. He explained that he had developed sepsis in January 2023 and had almost died as a result and had recently been diagnosed and was being treated for mouth cancer. He had multiple medical conditions for which he was undergoing treatment. He was effectively disabled and the medical conditions also caused him to experience brain fog and depression. As a result of the diagnoses the second named respondent had conducted on-line research for alternative treatments and had been led to believe that CBD oil might be an effective remedy. However, they discovered that the quantity of CBD oil required would be excessively expensive if bought over the counter and decided to attempt the cultivation of cannabis from which it could be produced, purely for medicinal and personal use.
7. The respondents advised that they had made efforts to obtain alternative accommodation since receiving the Notice to Leave but the properties had all been too expensive or had moved too quickly for them to be able to secure them. They said that they had been in touch with the local authority who had not been helpful and indicated that they could have a wait of up to 5 years before they could be accommodated. They said that they were to go back to the local authority if the order for eviction was granted and that temporary accommodation might be available in that event.
8. The respondents said they felt they were financially secure having around £80,000 in the bank and investments. They explained that they had been involved in a very

successful family business from which the first named respondent had made himself redundant due to his medical condition and, although they had no current income, they did not have concerns financially as they had been selling assets. They said that they were in the process of re-establishing their involvement in the family business and were hopeful that the business could continue to develop.

9. The first named respondent explained that he had been separated from his ex-wife for around 4 years. He said that he had made financial arrangements with his ex-wife in respect of herself and his children.
10. In response to questions from the tribunal about any receipt of housing benefits the respondents confirmed that they hoped to receive £875 per month in Universal Credit, but this had not started as yet. They said that they had been advised by CAB not to pay any rent whilst the eviction application was under way and this was the reason for non-payment of rent and the resulting arrears. They said that they intended to pay the arrears of rent for the period during which they were in occupation of property whether the order for eviction was granted or not and that the money for that was available. They confirmed that the property was not specially adapted for any particular needs, nor did they have a need for any particular adaptations. It was suitable for the first named respondent's children to visit but they live in South Edinburgh and do not require to stay at the property.
11. The respondents confirmed that they had been advised to plead not guilty to the charges in respect of the cannabis cultivation and that a trial had been set for 18 April 2023 at Edinburgh Sheriff Court. They re-iterated that the cannabis cultivation was entirely related to the first named respondent's medical condition in the hope that CBD oil would provide relief. They said that it was inconceivable for them to buy such a preparation across the counter and had begun to cultivate cannabis plants solely for that purpose.
12. The respondents repeated their regret as set out in their letter of 12 November 2021 and stated that they realised the mistake that they had made in an effort to alleviate the first named respondent's medical conditions. They repeated that the property was important to them and said that in the event of them being evicted the results could be devastating upon the first named respondent's health and condition.
13. With regard to arrears of rent, the respondents said that they had been advised by CAB not to pay rent during the progress of the eviction application, but they said that the money was available to clear the arrears and undertook to pay after conclusion of the proceedings, whether the order was granted or not.

Applicant's Position

14. On behalf of the applicant, Mr McFarlane repeated the basis of his client's argument that the granting of an eviction order is reasonable. He expressed empathy for the health condition of the first named respondent and did not seek to deny the seriousness of his condition. He also did not suggest that there were any current concerns in relation to ongoing illegal activity by the Respondents.

15. Mr McFarlane submitted that the tribunal should take account of the nature and gravity of the events and the whole circumstances which had led to the respondents' breach of the condition which prohibits the use, sale, cultivation or supply of unlawful drugs or the sale of alcohol.
16. Mr McFarlane outlined the prejudice to the applicant, the Estate and other tenants as set out in his Note of Argument in the event that an eviction order is not granted. He submitted that the applicant would suffer reputational damage in view of the nature of the activities and enterprises within the curtilage of the Estate. He referred to the breakdown in trust between the parties and the discomfort and embarrassment of the applicant in the event that the respondents remain on the Estate, given the criminal nature of the breach. The applicant does not want the Estate to have any association with illegal activities or antisocial activities which are likely to damage the estate reputation and/or impact on other tenants or the estate workers. He also referred to the significant rent arrears which had accrued and that no explanation had been forthcoming from the Respondents, nor had they engaged with the Estate following recent sending of invoices for rent owing.
17. The representations submitted on 16 March 2023 on behalf of the applicant referred to the rent arrears accrued by the respondents. At the time of the expiry of the Notice to Leave on 18 August 2022 arrears of £3322.39 had accrued between April and August 2022. The respondents had not explained the reason for the non-payment of rent, but the arrears were settled in full in November 2022. No further rent has been paid since August 2022, despite further invoices being issued by the letting agents resulting in arrears of £6852.61 at 1 March 2023.

Reasons for Decision

18. The tribunal had determined at the CMD on 18 January 2023 that the breach of tenancy condition 21.4.2 had been established and the purpose of the hearing today was therefore restricted to consideration of whether it was reasonable for the tribunal to grant the eviction order.
19. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
20. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

"[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world and come to his conclusion giving such weight as he thinks right to the various factors in the situation.

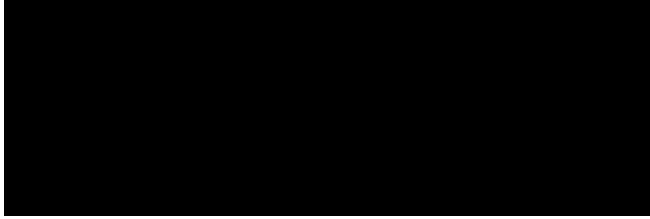
Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

21. The tribunal requires to balance the whole circumstances of both parties and to determine where the balance falls in making its order.
22. The tribunal had regard to the submissions made on behalf of the applicant relating to: the nature of the breach; the reputational damage to the Estate as a result of the actions of the respondents; the accumulation of rent arrears, lack of clarity on the Respondents' financial situation and lack of contact with the agents; the denial of access to the property; embarrassment, unwanted police attention and negative publicity; and the environment in which the property is situated.
23. On the other hand, the tribunal considered the position of the respondents in relation to: the first named respondent's medical condition and the resultant effect on him and the second-named respondent in the event that an order is granted; the stated reasons for the actions of the respondents resulting in the breach and the absence of any evidence of further activity in breach of that tenancy condition; the respondent's undertaking to pay the arrears of rent and resumption of rent payments in light of their financial situation; and the difficulties faced by the respondents in finding alternative accommodation.
24. There was nothing before the tribunal to suggest that the respondents might repeat the attempts to cultivate cannabis and there was no evidence to suggest that the attempted cultivation was for anything other than the medical reasons.
25. The tribunal could not understand why the CAB should advise that rent was not due to be paid during the eviction process to cover the on-going rent until the tenancy was ended by the tribunal, but it accepted the respondent's undertaking to clear the arrears. In accepting the respondents' position on this it took into account that the respondents had cleared the rent arrears up to August 2022 in the sum of £3322.39.
26. Whilst the tribunal found the evidence of the respondents to be less than fully convincing, it had regard to the medical difficulties suffered by the first named respondent and, in the circumstances gave them some latitude and attributed it to communication difficulties encountered by him on the telephone as a result of his mouth cancer.
27. The tribunal found that, on balance, the potential harm to the respondents outweighed that to the applicant in the light of the effect on the respective parties as presented at the hearing and in the written submissions.

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.



29 March 2023