



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

Chamber Ref: FTS/HPC/EV/23/0513

Re: Property at 2/2 5 Hamiltonhill Gardens, Glasgow, G22 5PR (“the Property”)

Parties:

Highlodge Agencies LTD, 71/75 Shelton Street, Covent Garden, London, WC2H 9LQ (“the Applicant”)

Mr Jordan McCool, 2/2 5 Hamiltonhill Gardens, Glasgow, G22 5PR (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to Leave, Section 11 Notice and rent statements were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 1 June 2023 and that they were required to participate.**
- 3. The CMD took place on 1 June 2023 at 2pm. The Applicant was represented by Mr Haq and Mr Hassan. The Respondent participated, supported by his partner Ms McNab**

4. Mr McCool told the Tribunal that the application is opposed. He said that he had been messed about by the Applicant since he moved into the property 5 years ago. There have been three different letting agents involved. Repairs have not been carried out and they have not been provided with keys for windows. This is problematic as his son has ADHD and autism and is at risk of opening the windows to get out of the property. In January 2022, he was told by Keith that they could have a new joint tenancy at an increased rent of £575. However, this has not been provided.
5. In response to questions from the Tribunal about the application paperwork, Mr McCool said that they were sent a Notice to leave in October 2022 but that the reason given in the email was that the Landlord intended to sell. When asked about the Notice, he checked and said that Part 2 of the Notice referred to rent arrears. However, the covering email said otherwise. In relation to the arrears of rent, Mr McCool said that he and his partner had a joint tenancy which started in 2018. They separated briefly and he became the sole tenant. After they got back together, they requested a new joint tenancy and were told this would be arranged, at an increased rent.
6. Mr Haq told the Tribunal that the rent arrears had increased to £4169.51 with the last payment received on 16 January 2023. He conceded that the sum of £466.52 must be deducted from this total as this was the sum due at the end of the previous joint tenancy. Ms Hassan advised the Tribunal that he did discuss the possibility of a new joint tenancy at a higher rent. He told Mr McCool that he would discuss this with the Landlord. However, the Landlord did not agree because the arrears were increasing.
7. Mr McCool said that he accepted that this sum specified is unpaid. However, he said that he has not paid because of repair issues and the failure to provide window keys which is a major issue for him and his partner. He said that he resides at the property with his 4-year-old son and his partner. They are not in employment and are in receipt of universal credit. Under the previous tenancy, housing costs were paid direct to the Landlord. However, he and his partner had a new joint claim when they got back together and have been waiting for the new joint tenancy agreement to claim their current housing costs. In response to questions from the Tribunal, he indicated that he thought they needed a joint tenancy to claim their housing costs.
8. Mr Haq told the Tribunal that they previously received payments from universal credit when there was a joint tenancy. When the tenancy became a sole tenancy, these payments reduced to £350 per month. Mr McCool was supposed to make up the difference, but the payments were erratic. They stopped altogether when Ms McNab moved back into the property. He advised the Tribunal that the Applicant is a Ltd company. Private lets are part of the business. His agency currently manages 4 properties and are not aware of any others. The property has 2 bedrooms. He believes that the local housing allowance is £595 for similar properties.

9. Following a short adjournment, the Tribunal advised the parties that the application would proceed to a hearing by telephone conference call. The issues for the hearing were -
- (a) Did the covering email to which the Notice to leave was attached state that the Notice was being served because the landlord wished to sell the property? Did this affect the validity of the Notice to leave?
 - (b) Has the Respondent withheld rent or is he entitled to an abatement of rent for the failure by the Applicant to carry out repairs at the property or provide keys for the windows?
 - (c) If the ground is established, would it be reasonable for the Tribunal to grant an order for eviction?
10. Following the CMD, the parties were issued with a direction for further documents to be lodged. They were notified that a hearing would take place by telephone conference call on 17 August 2023, at 10am. Prior to the hearing both parties lodged further documents. The Applicant submitted an updated rent statement and email correspondence. The Respondent submitted letters from Universal Credit regarding benefits payments between January and June 2023 and a letter from a health visitor regarding his son's needs.
11. The hearing took place on 17 August 2023. The Applicant was represented by Mr Hassan. His colleague Mr Shafetula also participated. The Respondent participated.

The Hearing

12. Mr Hassan told the Tribunal that the Applicant seeks an eviction order. He said that there are no outstanding repairs at the property. Recently, window repairs were carried out and the Respondent is now able to lock the window which had been the subject of his complaint. A new fridge has also been installed. There had been some problems getting access, due, in part, to the Respondent having issues with his phone. However, all matters have now been resolved. Mr Hassan referred to the updated rent statement which shows a balance owing of £4614.54 on 20 July 2023. He told the Tribunal that two further payments have been made - £250 on 3 August and £245 on 16 August. The balance due is now £4119.54. In the last two months the full rent charge has been paid but no payments to the arrears.
13. Mr McCool told the Tribunal that there are still outstanding repairs at the property which have been reported verbally on various occasions over the years. There is a hole under the flooring in the kitchen, following a previous repair, and a patch of damp on the ceiling. However, the main issue – the keys for the window – has recently been addressed. In response to questions from the Tribunal he said that he had not withheld rent because of the repairs and his full rent charge is now being met. He advised the Tribunal that he contacted the DWP following the CMD, and the issue of his housing costs was sorted the

same day. He had misunderstood the position and thought that he and his partner needed a joint tenancy to claim these costs. In response to questions about his universal credit, Mr McCool confirmed that his benefit had been sanctioned. He said that he had some health issues and had missed appointments. However, he has been referred for investigation for his medical issues and the sanctions have been removed. He will receive his full benefit entitlement from now on. He confirmed that he has not started making payments to the arrears or approached the Applicant to discuss an arrangement. He did not want to do so until after the hearing as he does not trust the Applicant's representatives. He explained that his rent is being paid in two instalments each month, because he is paid fortnightly. He confirmed that he is happy with the new window locks which mean that his son can play safely on his own. They use the garden at the property but it's not blocked off, so they have to be careful that he does not run off. When asked whether he and his partner are looking for work, Mr McCool said that he had recently been signed off, but his sick line has expired. His partner is attending job clubs to help her get back into work. They are on a Council waiting list and contact the Council regularly but there is nothing available for them at the moment. They would prefer to stay at the property as they have lived there for several years and their son attends a nursery nearby. He is not due to start school until 2024.

14. The Tribunal asked Mr McCool about the arrears of rent and whether he could repay these. He stated that he was willing to make a repayment arrangement . He said that he was misled by Mr Hassan who told him that they could have a joint tenancy at an increased rent of £575 per month. He thought that they needed to have a joint tenancy if he and his partner were both living at the property. He said that they could pay £50 every Friday and would make additional payments when they could.
15. Mr Hassan told the Tribunal that he did not think that £50 per week was affordable, given the Respondent's circumstances. Even if it was maintained it would take 2 years to repay the arrears. He said that the Respondent has had a significant period to sort out his finances and the Applicant has been reasonable. The rent payments have only resumed because of the Tribunal proceedings and there have been no efforts to address the arrears so far. He denied that he had misled the Respondent about the joint tenancy. It was always made clear that it was the landlord's decision. In relation to the email sent with the Notice to leave, Mr Hassan said that this was an admin error. An email template had been used. The Landlord does not intend to sell. The terms of the Notice were correct. He stated that the flooring issue was just a tear when a repair was carried out. The damp patch is a historic issue. There is no leak at present, as confirmed by the Property Factor.
16. Mr McCool said that he disputed what had been said by Mr Hassan about the outstanding repairs – the roof was never properly repaired. In response to questions from the Tribunal, he said that he had not applied for a backdate of universal credit in relation to the arrears and had not sought a discretionary housing payment although he had received letters about this.

Findings in Fact

17. The Applicant is the owner and landlord of the property.
18. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
19. The Respondent is due to pay rent at the rate of £495 per month.
20. The Respondent has been in arrears of rent since December 2021.
21. The Respondent currently owes the sum of £4119.54 in unpaid rent.
22. The Respondent is in receipt of universal credit but did not claim the housing cost element of the benefit between January and June 2023. Since 1 June 2023, the housing cost element of the benefit has been in payment and covers the rent charge.
23. The Applicant served a Notice to leave on the Respondent on 18 October 2022. The Notice to leave is based on ground 12 of schedule 3 of the 2016 Act, rent arrears over three consecutive months. The covering email with the Notice states that the landlord intends to sell the property. The Landlord does not intend to sell the property.
24. The Respondent did not withhold rent due to the failure by the landlord to carry out repairs.
25. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
26. The Respondent occupies the property with his partner and their 4 year old son who has additional support needs. They are unemployed.
27. The Respondent has made no payments to the rent arrears.

Reasons for Decision

28. The application was submitted with a Notice to Leave dated 18 October 2022 together with a copy of an email delivery notice which establishes that the Notice was sent to the Respondent on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 18 November 2022.

29. At the CMD, the Respondent told the Tribunal that he had been served with a Notice to leave on the grounds that the landlord intended to sell. However, when he checked the email and notice he confirmed that the Notice did refer to rent arrears. The Tribunal considered the email, and the explanation offered by the Applicant, and is satisfied that the content of the email was inaccurate due to an admin error. However, the Notice itself clearly refers to ground 12 and makes no reference to ground 1. The Tribunal is satisfied that the Notice is in the correct format and complies with Section 62 of the 2016 Act.
30. The application to the Tribunal was made after expiry of the notice period specified in Part 4 of the Notice. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
31. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order."
32. Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
33. The Tribunal is satisfied that the Respondent currently owes the sum of £4119.54 and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the hearing.
34. Although the Respondent made reference to repair issues at the property both at the CMD and the hearing, the Tribunal is not persuaded that he withheld rent due to a failure by the Applicant to carry out repairs or that he is entitled to an abatement of rent. It was clear from the oral and documentary evidence that the arrears of rent are due to financial difficulties caused by fluctuating income. The arrears started when the Respondent became the sole tenant of the property. Previously, it had been a joint tenancy and the rent charge was

covered by payments from universal credit. As a sole claimant, the Respondent was not entitled to housing costs which covered the whole rent charge, and he did not make up the shortfall. The Tribunal also notes that the repair issues which were raised were relatively minor and would not warrant a reduction in rent.

35. The Tribunal is therefore satisfied that the eviction ground is established.
36. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The application was accompanied by a letters dated 30 September, 11 and 18 October 2022 which provide information in compliance with the regulations.
 - (b) The Tribunal is also satisfied that the arrears do not appear to be attributable to a delay or failure in the payment of a relevant benefit. A substantial part of the arrears is certainly due to the Respondent's failure to claim the housing costs element of his universal credit between January and June 2023. This appears to be due to a misunderstanding on his part that he had to have a joint tenancy to make this claim. However, there is no evidence that this misunderstanding was due to incorrect information being provided by the Applicant. They made it quite clear that he was not being offered a joint tenancy unless and until he cleared the arrears. It appears that Mr McCool did not take advice or discuss the matter with Universal Credit. The fact that sanctions were recently applied to his benefit suggests that there is a pattern of him failing to engage fully with the benefit process. The failure in the payment of the relevant benefit was caused by his failure to make a claim. He has also failed to investigate the possibility of a backdate of benefit or a discretionary housing payment, although he had the necessary information to do so.
 - (c) The Respondent has failed to engage with the Applicant regarding the arrears. Although his benefits have been sorted out, he has not made any payments to the arrears or contacted the Applicant with a payment proposal.
 - (d) The Respondent said at the hearing that he could pay £50 per week to the arrears. The Tribunal agrees it the Applicant's representative that this is an unrealistic offer given the level of arrears and the restricted income. It is evident that the Applicant would have been willing to make a repayment arrangement at an earlier stage if this had been made.
 - (e) The Tribunal notes that an eviction order is likely to have a disruptive effect on the Respondent's family, particularly his son who attends a local nursery. However, he is not due to start school for another year so there is time for the family to settle elsewhere before he does so. Neither of the Respondents work at present so a move will not affect their working life. The Tribunal also notes that, as the Cost of Living Act applies, the Respondent will have a period of 6

months to source alternative accommodation.

37. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 36, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

38. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

17 August 2023