



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/23/0122

Re: Property at 35 Moorside Street, Carluke, ML8 4EJ (“the Property”)

Parties:

Mrs Veronica Ross, 9 Millstone Park, Biggar, ML12 6AQ (“the Applicant”)

Ms Hannah Hodge, Mr Stuart Gallagher, 14 Craiglea Street, Rigside, ML11 9LZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber with email dated 12th January 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground was amended to ground 12A by letter of 24th April 2023.
2. On 20th April 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 25th May 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 11th May 2023.

3. On 24th April 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondents by letterbox service. This was evidenced by Certificate of Intimation dated 24th April 2023.
4. The Tribunal held a Case Management Discussion (“CMD”) on 25th May 2023 at 10am by teleconferencing. The Applicant was present. She was represented by her husband, Mr Simon Ross. The First Named Respondent, Mr Stuart Gallagher, was present and spoke on behalf of both Respondents. Mr Gallagher said that he was able to speak on behalf of Ms Hodge. He said that they had only got the papers 5 days ago. They had collected them from the Property. The Respondents are no longer living in the Property. They have moved into a council property. It is smaller and they cannot fit all their belongings in it. Mr Gallagher said that he would like to have 3-4 more weeks to empty the Property and return it to the state it was when they first rented it. They have got new carpets to be installed. Mr Gallagher said that they had left the Property in February 2023. He is in the process of obtaining a storage container for all of their belongings that are in the Property. He said that the relationship with the Applicant had become acrimonious. Mr Gallagher said that he admitted that arrears were due to the Applicant. He would like to be able to enter into a payment plan to pay the arrears. Mr Ross said that there have been many times that the Applicant had tried to obtain access for inspections and gas safety checks but had not been able to get access. He also said that there were now 7 months outstanding rent payments due. The Tribunal noted that it needed a rent statement in order to consider granting an order under ground 12A. Mr Ross will provide this to the Housing and Property Chamber. Mr Ross noted that there had been complaints to the neighbours which had been reported to the local council. The Tribunal noted that this CMD was focused on whether the Respondents should be evicted. The reference to rent arrears were made as ground 12A is based on rent arrears. If the Applicant wishes to lodge a payment application then they should reference this application to allow the cases to be conjoined. However, there is no requirement to lodge a time to pay application for this Tribunal to consider ground 12A. If a payment order application is made then the Respondents will be able to consider a time to pay direction which would allow them to pay the arrears at an agreed rate. This would need to be determined by the Tribunal. The Respondents should get money advice to complete any time to pay direction. The Tribunal further noted that there was nothing to prevent the parties entering into negotiations in the interim. The CMD was adjourned for the Applicant to submit a rent account to allow the Tribunal to determine ground 12A. The Applicant will notify the Housing and Property Chamber to withdraw the application if the keys to the Property have been returned to her and an order is no longer needed.
5. On 22nd June 2023, the Applicant emailed the Housing and Property Chamber to advise that there had been no contact from the Respondents and the keys have not been returned to the Applicant.
6. On 28th June 2023, the Housing and Property Chamber received a letter from the Applicant including a rent account. The rent account was for the period November 2022 to 7th July 2023 and detailed the arrears as £3525.

7. On 29th June 2023, the Applicant emailed the Housing and Property Chamber informing that the Respondents had still not left the Property and were accruing arrears.
8. On 3rd July 2023, the Applicant emailed the Housing and Property Chamber confirming that they wished both grounds to be considered namely grounds 1 and 12A.
9. On 25th July 2023, the Applicant emailed the Housing and Property Chamber advising that they had sought advice from their MP and that the Respondents had still not left the Property.
10. On 2nd August 2023, the Respondents were emailed with the new date for the CMD being 28th August 2023 at 10am by teleconferencing.
11. On 15th August 2023, an email was received by the Housing and Property Chamber from the Applicant's MP concerning the application.

The Case Management Discussion

12. A CMD was held on 28th August 2023 at 10am by teleconferencing. The Applicant was present and represented by her husband Mr Simon Ross. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make any representations in advance of this CMD.
13. Mr Ross confirmed that there has been no contact from the Respondents. They have not returned the keys to the Applicant. There have been reports to the Applicant from the neighbours at the Property that the carpets have been ripped out and that more items have been dumped in the garden. It is believed that this is now being done by other people too.
14. Mr Ross said that the Respondents have not made any payments in 10 months. This is causing pressure on the Applicant both financially and for her own wellbeing. The Applicant wishes for ground 12A to be considered. They still wish to sell the Property but it is also significant that the Respondents have not made payments for over six months. The intention is to sell the Property, on which there is no mortgage, once they have it back in their possession. The Applicant owns one other property that is let out to an elderly woman. The funds received from the Property's rental income enables the Applicant to be able to afford to pay the mortgage on the property occupied by the elderly woman. They have given the elderly woman their guarantee that she can continue to live in it as long as she is able to do so. The cessation of rental income from the Property has placed the Applicants under considerable financial strain as work part-time in low income jobs.
15. The Tribunal were satisfied that the application could be amended to ground 12A. Notice had been given at the previous CMD when the First Named

Respondent was present. It was detailed in the CMD note. The Tribunal were satisfied that the Respondents were aware that the ground was to be amended.

Findings and reason for decision

16. A Private Rented Tenancy Agreement commenced 7th September 2020.
17. The Respondent persistently failed to pay their rent charge of £425 per month. The rent payments are due to be paid on the 7th day of each month.
18. Arrears accrued to more six than months rent payments at the date of the CMD. The current arrears are £3525.
19. The Respondents have left the Property and undertaken a new local authority tenancy in February 2023. They have not returned the keys to the Property to the Applicant.
20. There is no issue of reasonableness preventing an eviction being granted.

Decision

21. The Tribunal found that ground 12A has been established and granted an order in favour of the Applicant. There were no issues of reasonableness to prevent an order for eviction being granted.

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.

Gabrielle Miller

28th August 2023

Legal Member/Chair

Date

