

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/21/2559

Re: Property at Wester Sunnyside House, Methven, Perth, PH1 3RF (“the Property”)

Parties:

Mr Thomas Filmer, Ms Frances Casey, Braes of Newbigging, Fowlis Wester, Crieff, PH7 3NW (“the Applicants”)

Mrs Donna Breen, Wester Sunnyside House, Methven, Perth, PH1 3RF (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted against the respondent

Introduction

These are linked applications between the same parties and are applications under Rules 109 and 111 and Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The applications seek a Payment Order to recover arrears of rent and an Eviction Order.

Intimation of the applications and of the Case Management Discussions (CMDs) was effected upon the respondent by Sheriff Officers on 16 December 2021.

The CMDs took place by teleconference on 20 January 2022 at 10.00 am.

The applicants joined personally and were represented by Mr Matthew Lynch, solicitor. The respondent represented her own interests.

Findings and Reasons

Background

The property is Wester Sunnyside House, Methven, Perth PH1 3RF

The applicants are Mr Thomas Filmer and Ms Frances Casey. They are the heritable proprietors of the property and are the landlords. The respondent is Mrs Donna Breen. She is the tenant.

The parties entered into a private residential tenancy in respect of the property which commenced on 25 March 2020. The rent was stipulated at £750 per month. The respondent has lived in the property since 29 March 2017 and was a former joint tenant of the property.

Rent arrears

The Tribunal was satisfied on the basis of the credible and reliable documentary evidence in the form of a detailed rent statement that the respondent has fallen into arrears of the contractual rental payments required under and in terms of the lease. The respondent admitted the arrears claimed exist.

The required rent was one of £750.00 per month. The last rent payment received from the respondent was on 24 May 2021. As at the time of the applications submitted to the Tribunal, the outstanding rent was £3,750. The Tribunal was satisfied that this level of arrears existed then. Rent arrears are continuing but no Rule 14 A amendment application has been made to increase the sums sought by way of recovery.

The respondent advised that the Housing Element of her Universal Credit claim had ceased which had caused her to be unable to cover the rental payments. She could not offer any reason as to why the payments had stopped. The difficulty has been ongoing for well over 6 months.

The applicants are entitled to recover the arrears of rent lawfully due under and in terms of the lease between the parties.

The applicants have not sought expenses or any additional charges which may be due from the respondent. The respondent has not made a time to pay application.

The Tribunal granted a payment order against the respondent for £3,750.

Eviction

The written application for eviction refers to two separate grounds – both grounds 1 and 12, contained within Part 1, Schedule 3 to the 2016 Act. Ground 1 is that the landlord intends to sell the property and ground 12 is that the tenant has been in rent arrears for three or more consecutive months. The Notice to Leave served upon the respondent refers only to ground 1. No notice was given to the respondent of a wish to evict on the basis of rent arrears. In the circumstances there was no insistence upon ground 12. This was clarified in advance of the CMDs.

Ground 1 was originally drafted as mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act.

The relevant notice period under ground 1 was previously one of 84 days and is now one of 6 months.

The Notice to Leave relied upon in the Eviction Application was not prepared in accordance with the provisions of Section 62 of the Act. This requires an initial period of 2 days to be added on for deemed service of the Notice and an additional one day at the end. The date specified in the Notice to Leave, being the first anticipated date of relevant proceedings being initiated to the Tribunal, should therefore be calculated at a total of 6 months plus 3 days. The Notice to Leave relied upon in this case is dated 30 March 2021 and stipulates that the applicants anticipated that an application would not be submitted to the Tribunal before 30 September 2021. The Notice as drafted was 3 days short.

Service of the Notice to Leave upon the respondent took place by recorded delivery post. Evidence of the 'signed for' service on 31 March 2021 is produced. It was delivered after one day, less than the deemed 2 day period. This reduces the extent to which the notice given was short.

The assumption regarding the deemed 2 days for service under Section 62 of the Act is rebuttable in accordance with the decision of Sheriff Fleming in the Upper Tribunal – [2021] UT20 UTS/AP/20/0029. It is evidenced that the Notice was received by the respondent on 31 March 2021. The 6 month notice period commenced then and would have expired on 30 September 2021. The additional one day required under Section 62 of the Act means that the Notice still ought to have specified 1 October 2021 as being the first day upon which relevant proceedings before the Tribunal could be commenced.

The essential requirements of a Notice to Leave, which are prescribed by section 62(1) have not all been adhered to, because subsection (b) has not been met. This is because the specified day contained within the Notice to Leave, said to be the day on

which the landlord expects to become entitled to make an application for an Eviction Order to the First-tier Tribunal, is one day early. The Notice to Leave is not valid with reference to the primary statutory provisions.

The Tribunal proceeded however to consider the validity of the Notice to Leave with reference to the amendments brought about by the Coronavirus (Scotland) Act 2020. Paragraph 10 of Schedule 1 to the 2020 Act is in the following terms:

10. Errors in notices

1. Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9 –

- (a) the notice is not invalid by reason of that error, but
- (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been properly completed.

The Tribunal concluded that the provisions contained in Schedule 1 of the 2020 Act do provide a right of relief to the applicants to allow the Notice to Leave to be relied upon as at the date of the hearing.

The Tribunal proceeded to consider the merits of the eviction application. Limited documentary evidence was produced in advance of the hearing which consists of an email sent to the applicants by their proposed marketing agent. The Tribunal noted detailed evidence from Mr Filmer regarding the applicants' intention to sell. They purchased the let property to live in themselves but Mr Filmer's elderly parents required care and they sourced a home with disability access instead of taking up occupation of the let property which was not suitable for their needs. The applicants gave up work to care for Mr Filmer's parents and Ms Casey's mother, who lives elsewhere. Mr Filmer's father sadly died in October 2021. The applicants became accidental landlords never having had the original intention of letting the property. They have a substantial amount of capital tied up in the property which they now wish to release. Their intention to sell in these circumstances arose before the respondent started to fall into arrears of her rent hence why the notice to leave did not include reference to rent arrears.

The respondent said she knew that the applicants intended to sell the let property and did not doubt their intentions. The Tribunal found the unchallenged evidence of Mr Filmer credible and reliable and was satisfied that ground 1 was established.

The Tribunal proceeded to consider the reasonableness of making an Eviction Order. In so doing the Tribunal weighed up the respective circumstances and needs of the parties.

The applicants are not working. They have mortgage commitments on the let property and are not now receiving any rent. They wish to utilise the equity in the property to service their own lifestyle. They have been maintaining the let property despite receiving no rent since late May 2021. There is no sign yet that the respondent has resolved her inability to pay rent and the problem is ongoing.

The respondent is unemployed. She has three children, two sons aged 22 and 17, who are not working or in education and a school age daughter aged 14. Her sons are believed to have a disability but have not been the subject of any relevant assessment and have no diagnosis. The respondent described herself as dyslexic and advised that she struggles to manage matters such as filling in forms and claiming benefits though she has sought help. She has lost her elderly mother from cancer and her estranged husband within the last short period.

The respondent is in contact with the homeless team of her local authority. A relevant section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been issued to the local authority. The respondent advised that she has no material objection in principle to being evicted subject to securing suitable alternative accommodation. She reported that she was to view an alternate property the following day – on Friday 21 January 2022. The Tribunal found that it was more likely than not that the respondent and her family will be offered alternative suitable housing based upon their assessed need in the event of an eviction order being made.

Weighing up the respective circumstances of the parties, the Tribunal concluded that it was reasonable to grant the Eviction Order.

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.

Richard Mill

Member/Chair

Legal

20 January 2022

Date