



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/2563

Re: Property at 4 Netherplace Crescent, Glasgow, G77 6BT (“the Property”)

Parties:

Heinzsight Properties Ltd. T/A Slugletting Co., 8 Williamwood Park West, Glasgow, G44 3TE (“the Applicants”)

Mr Bogdan Budai, Ms Ioana Nyiko, Flat 2/1, 4 Balgraystone Road, Barrhead, G78 2SB; 4 Netherplace Crescent, Glasgow, G77 6BT (“the Respondents”)

Tribunal Members:

Steven Quither (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that the order for possession be GRANTED against the Second Respondent under s51 and Ground 12 of Schedule 3 of the Act, the First Respondent’s tenancy having already come to an end on or about 20 APRIL 2022 under section 50 of the Act.

1. BACKGROUND

This is an application to bring to an end a Private Residential Tenancy (“PRT”) between the parties commencing 16 June 2019 in view of rent arrears which the Applicants state accrued in the sum of £4380, up to August 2022, per Rent Statement lodged for period from 16 May 2015 to then. Said statement also confirmed that the Respondents had been in arrears for a period in excess of 3 consecutive months during the period in question in that arrears first arose in May 2020 and subsequently further accrued in each of June and July 2020, January, February, March, May, July, October, November and December 2021 and June, July and August 2022, by which time arrears totalled said sum of £4380. Accordingly, the Respondents were in arrears from May 2020 till August 2022.

Following upon sundry procedure, a Case Management Discussion (“CMD”) was fixed for 16 December 2022.

Prior to the CMD, preliminary consideration of the supporting documentation for this application confirmed that Notice to Leave (“NTL”) dated 1 September 2021 was given to and received by the Respondents on said date, based on the Respondents being in rent arrears for 3 or more consecutive months (Ground 12 of Schedule 3 of the Act). The appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003 on 26 July and acknowledged receipt of same on 28 July, both 2022. This application, also dated 26 July and based on said NTL was acknowledged by the Tribunal on 28 July, both 2022. There had not been any information sent to the Respondents such as to satisfy the Pre-Action Requirements for this type of application but by e-mail of 11 December 2022 the Applicants advised they were aware of contact between the Second Respondent and East Renfrewshire Citizens Advice Bureau to seek assistance.

A request for further information by the Tribunal dated 26 August was duly responded to by the Applicants on 31 August, leading to acceptance of the application by the Tribunal by Notice of Acceptance of 28 September, all 2022. Part of the information provided by the Applicants was that the First Respondent had left the property on 20 April 2022, leading to Section 50 of the Act operating to terminate the First Respondent’s tenancy as at said date, since he had previously received said Notice to Leave from the Applicants.

At all times the Tribunal was aware that in relation to this eviction case, it required to be satisfied not only that the formal requirements regarding same had been complied with but also that it was reasonable to make the order for repossession.

2. CASE MANAGEMENT DISCUSSION 16 DECEMBER 2022

The CMD duly commenced by teleconference at about 10am. Paul Barclay attended for the Applicants and both Respondents attended also.

Mr Barclay confirmed he was the Principal of the named Applicants and upon being asked by the Tribunal to state his case and thereafter answer subsequent enquiries, advised:--

- a) He had handed the Notice to Leave to the Respondents on 1 September 2021, despite the PRT providing in Clause 4 for all communications between the parties to be by email. He had done so from the point of view of certainty when he attended the Property and met with the Respondents there;
- b) Since the date of the Rent Statement, he had received a further £1300 towards arrears, which was paid to him by the Second Respondent from benefits received but arrears had continued to accrue and accordingly the full amount outstanding now stood at £5960;
- c) He was not unsympathetic to the Second Respondent’s possible impending homelessness, but arrears continued to accrue and he did not wish these to accrue any further, notwithstanding what he understood to have been some difficulty with the Second Respondent’s benefits entitlement. Put plainly, her present level of entitlement did not cover ongoing liability for rent, far less address any arrears and he did not feel that could continue;
- d) He intended to re-let the Property, which was one of 14 properties owned by him;

- e) He had been in communication with the Respondents and the Citizens Advice Bureau's Mark Richmond assisting them and appreciated their efforts to address arrears but nonetheless arrears continued to accrue and there did not appear to be any realistic prospect of matters improving;
- f) He applied for and felt that if granted it might assist the Second Respondent being rehoused;
- g) In the circumstances of such a substantial amount of arrears having now accrued and there being no realistic proposals to address same, he confirmed he was seeking the order for repossession, was asking the Tribunal to find the rent arrears part of Ground 12 established and on that account to consider it reasonable to make the order for repossession now sought.

By way of response, the Respondents advised:--

- a) The First Respondent had left the Property on 25 April 2022, at which time the arrears stood at £2300, which arrears he was hoping to arrange to pay if afforded the opportunity to do so, but he did not feel he could pay any further amount, given that it had accrued after he left ;
- b) Although he had some reservations about how the arrears had been made out in terms of the Rent Statement, he accepted the figure arrived at;
- c) In that the Rent Statement commenced prior to the commencement date of the PRT, he advised that prior to the PRT he had a verbal agreement with the Applicants to let the Property, which was then formalised by the PRT;
- d) He was in full-time employment as a telecoms engineer, having previously been self-employed until about 2015, but the change in his employment status had not had any adverse financial effect, although medical issues arising had had such an effect;
- e) He and the Second Respondent were no longer together and had one child together;
- f) He was presently living in local authority accommodation
- g) The Respondents' child was aged 7 and had been diagnosed with epilepsy;
- h) The Second Respondent was not in employment and received Universal Credit of £590 per month and £660 per month to assist with her rent. She did not receive any additional sums in respect of her daughter's medical condition;

3. FINDINGS IN FACT

The Respondents are due and liable for arrears of rent up to 16 December 2022 in the sum of £5960 arising out of a PRT between the parties commencing 16 June 2019. They have been in rent arrears for 3 or more consecutive months during at least the period between May 2020 and August 2022.

4. REASONS FOR DECISION

The Tribunal was satisfied that arrears of £4380 had accrued per the Rent Statement to August 2022, updated as at the CMD date to a figure then outstanding of £5960 and that the Respondents had been in rent arrears for 3 or more consecutive months. Having found that the Respondents were in such arrears for such period, the Tribunal was of the view that Ground 12 founded upon by the Applicants in this application had been established.

Furthermore, in view of said level of arrears which had accrued, the Tribunal was satisfied it was just and reasonable to make the order sought but only in respect of the Second Respondent, who remained in occupancy at the Property. Since the First Respondent had ceased to occupy the Property on either 20 or 25 April 2022, following upon receipt of Notice to Leave from the Applicants, the Tribunal took the view that Section 50 of the Act operated to bring the tenancy of the First Respondent to an end in April 2022. Simply due to the fact that the information from the Applicants as to when the First Respondent left the property was provided to the Tribunal in August 2022, as opposed to today's CMD, when the First Respondent advised it was 25 April the Tribunal is minded to accept 20 April as the more accurate date, since events in April might reasonably be expected to be more accurately recalled in August than December. From a practical point of view, it makes little difference. So far as service of the NTL is concerned, the Tribunal is of the view that parties waived the terms of Clause 3 of the PRT as to how communications were to be made between them.

Similarly, the Tribunal considered that since the Respondents had been in contact with Citizens Advice Bureau, there was no issue with the Applicants not providing Pre Action Requirement information.

In any event, no issue was made in respect of either matter by the Respondents.

5. DECISION

To make the order for possession sought by the Applicants against the Second Respondent only under s51 and Ground 12 of Schedule 3 of the Act, the First Respondent's tenancy having already come to an end on or about 20 APRIL 2022 under section 50 of the Act.

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.

Steven Quither

16 DECEMBER 2022

Legal Member/Chair

Date

