



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/1991

Re: Property at Flat 1 Milldale Mews, 68-72 Auchmill Road, Aberdeen, AB21 9LQ (“the Property”)

Parties:

Miss Laura Andrew, 37 Laurel Grove, Bonnybridge, Falkirk, FK4 2ED (“the Applicant”)

Ms Claire Marie Warrender, Flat 1 Milldale Mews, 68-72 Auchmill Road, Aberdeen, AB21 9LQ (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

Background

1. This is an application received in the period from 16th September to 14th December 2020 made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 12 of the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representative submitted a copy of the tenancy agreement between the parties, which commenced on 2nd July 2019, copy Notice to Leave dated 4th May 2020, stating that an action would not be raised before 5th August 2020, copy section 11 Notice to the Local Authority served on 3rd October 2020, and rent statement showing arrears of £4250.
2. A Direction was served upon the Applicant’s representative dated 8th January 2021, requesting written submissions addressing why it would be reasonable for the Tribunal to entertain the application before the expiry of the relevant

notice period, in terms of section 52(4) of the 2016 Act; and requesting an updated rent statement. No response to the Direction was received.

3. A hearing took place by telephone conference on 18th February 2021. The Applicant was not in attendance and was represented by Mr Christopher Riley and Mr Daniel Brookfield of Purple Bricks. The Respondent was in attendance. The hearing was continued to a further hearing to allow the Applicant's representatives to lodge documentation that had been sent but not received by the Tribunal, some of which responded to the points raised in the Direction, and further evidence concerning emails sent to the Respondent. The Respondent was invited to lodge evidence to support her defence, including benefit information.
4. By email dated 18th February 2021, the representatives for the Applicant lodged an email dated 2nd February 2021, providing information on the Applicant's circumstances and a letter from the Applicant's mortgage company dated 6th January 2021, regarding a missing mortgage payment.
5. By email dated 22nd February 2021, the representatives for the Applicant lodged copy automated emails sent to the Respondent concerning her arrears.
6. By email dated 12th March 2021, the representatives for the Applicant lodged written representations from the Applicant concerning her personal circumstances.

The Hearing

7. A hearing took place by telephone conference on 18th February 2021. The Applicant was not in attendance and was represented by Mr Christopher Riley and Mr Daniel Brookfield of Purple Bricks. The Respondent was in attendance.

Service of the Notice to Leave

8. The Notice to Leave had been hand-delivered to the Respondent and posted first class. The firm usually uses recorded delivery or hand delivery, but recorded delivery was not being used during the Covid-19 pandemic. Although clause 4 of the tenancy agreement provided for email delivery, the Applicant's representative had sent previous emails to the Respondent but had never received a response, so personal delivery was undertaken.
9. The Respondent confirmed that the Notice to Leave was personally delivered into her hand. She did not receive it by mail. She said she had never received any emails from the Applicant's representative. She confirmed that the email address provided in the tenancy agreement was the correct email address.

Section 52(4) of the 2016 Act

10. In response to the issue that the application was made before the expiry of the notice period of 6 months, as introduced by the 2020 Act, and, thus, in breach of section 54 of the 2016 Act, Mr Brookfield submitted that it was reasonable for the Tribunal to entertain the application in terms of section 52(4) of the 2016 Act. The Respondent has not paid any rent for a year. The Applicant's representatives have tried to have discussions with the Respondent, in the hope of sorting matters out amicably, but she has not responded. The Applicant is suffering hardship as she can no longer meet her mortgage payments. She is now 'sofa-surfing' as she cannot afford to pay her rent and she wishes to move back into the Property. Her situation is one of desperation.
11. The Respondent had indicated at the first hearing that she had separated from an abusive partner, after which she had lost her job due to mental health issues. She has been on benefits since September but is not receiving any benefit in respect of housing costs. She had spoken to the relevant agency about having her Universal Credit increased to cover housing costs. She claimed that benefits were affected by agency staff home working due to the pandemic and this had increased waiting times. She made an application for housing costs the week before the last hearing. The delay in applying for help with housing costs was due to the fact that she was struggling, after two abusive relationships and a court case. She had not thought to ask for any support with benefits or any other issues.
12. The Respondent confirmed at this hearing that her circumstances had not changed. She said she had tried speaking to the relevant agency about benefits but nothing had been forthcoming in terms of assistance with housing costs. She said she has a court case next Monday and she has been told that the outcome does not look good for her, so she has decided to give up the Property and intends to do so in the coming week.
13. The Respondent said she had the option of staying with a friend if an eviction order was granted, and she did continue to require housing after the court case. She has been in touch with the appropriate authorities regarding social housing, but nothing has been forthcoming.

Ground 12

14. The Applicant's representatives indicated that nothing had changed since the case was first heard, at which time the arrears were £5525. No rent has been paid for a year. It was their position that the ground was met.
15. Responding to questions from the Tribunal, the Respondent confirmed that there had been no delay or failure in the payment of a relevant benefit.

Reasonableness

16. The representatives for the Applicant submitted that, in all the circumstances, as previously mentioned, it was reasonable to grant the eviction order.
17. The Respondent confirmed that she lived alone at the Property, and had nothing further to add to what had been said previously regarding her circumstances, including that she intended to give up the tenancy within the next week.
18. The representatives for the Applicant confirmed that they continued to wish to have an eviction order granted notwithstanding the position taken by the Respondent in terms of giving up the tenancy.

Findings in Fact and Law

19.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 2nd July 2019.
 - (ii) The rent was £425 per month.
 - (iii) Notice to Leave has been served upon the Respondent.
 - (iv) It is reasonable for the Tribunal to entertain the application despite the breach of section 54 of the 2016 Act.
 - (v) The Respondent has been in arrears of rent for three or more consecutive months.
 - (vi) At the date of both hearings the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
 - (vii) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (i) It is reasonable to grant an eviction order.

Reasons for Decision

20. The Tribunal considered that the notice to leave was served properly in terms of section 26(2)(a) of the Interpretation and Legislative Reform (Scotland) Act 2010, by personal delivery to the Respondent.
21. Section 54 of the 2016 Act, as amended by the 2020 Act, provides that a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that notice.

The notice to leave in this case was served on 4th May 2020. The date inserted in the notice at Part 4, before which an application could not be raised was 5th August 2020, a period of three months. The notice period for a ground 12 application ought to have been six months. The application was lodged on 9th September 2020 and accepted on 8th January 2021. In terms of paragraph 10 of the 2020 Act the error in the notice did not render it invalid, however, paragraph 10 provides that it may not be relied upon by the landlord for the purposes of seeking an order until the date on which it could have been relied upon had it been correctly completed.

22. In terms of section 52(2) of the 2016 Act, the Tribunal is not to entertain an application for an eviction order if it is made in breach of sections 54-56, but 52(4) provides that the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers it reasonable to do so.
23. The Tribunal took all the circumstances of both parties into account in deciding whether it was reasonable to entertain the application. The Tribunal considered that the Applicant was in desperate circumstances with the possibility of repossession of the Property by her mortgage lender if she cannot pay the mortgage. It was indicated in her written representations that her physical and mental health has been affected by the ongoing situation. She is forced to stay with friends, an arrangement that is now coming to an end. Although the application was not raised under Ground 1, she now wishes to live in the Property with a view to selling it.
24. The Tribunal took into account the difficult circumstances of the Respondent, who has also suffered from mental health issues following abusive relationships. The Tribunal considered that the Respondent had failed to adequately progress a timeous application for assistance with housing costs, with no reasonable excuse. The Tribunal took into account the fact that the Respondent had indicated that she had somewhere else to live if the order was granted. The Tribunal took into account the fact that the Respondent was no longer opposing the granting of an order, and had stated that she wished to give up the tenancy imminently.
25. The Tribunal considered there was a strong need on the part of the Applicant to recover possession of the Property as soon as possible and that it would be reasonable to entertain the application, despite it being made in breach of section 54 of the 2016 Act. The Tribunal considered that any prejudice to the Respondent from the shorter period of notice was mitigated by the fact that it is now over ten months since notice was given. In addition, the Respondent now wishes to give up the tenancy
26. Ground 12 of Schedule 3 of the 2016 Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day;

(2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months; and
(3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

27. The Tribunal is satisfied that Ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit.

28. In considering whether it was reasonable to grant the eviction order, the Tribunal considered all the circumstances of the case, as discussed above. The level of arrears is considerable in this case, and the Applicant's circumstances are desperate in terms of being unable to pay the mortgage on the Property and the possibility of repossession by the lender. While the Respondent is also in difficult circumstances, she has indicated an intention to give up the tenancy. She has somewhere else that she can stay. In all the circumstances, the Tribunal found that it was reasonable to grant the eviction order.

Decision

29. An eviction order in respect of the Property is 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.

Helen Forbes

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Legal Member/Chair

15th March 2021

Date