



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 30 of the The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/21/0220

Re: Property at 52 Park Holme Court, Hamilton, ML3 0FB (“the Property”)

Parties:

Mr David Mo, 61 Sandhead Terrace, Blantyre, Glasgow, G72 0JH (“the Applicant”)

Mr Alan Cranston, 52 Park Holme Court, Hamilton, ML3 0FB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application by the Respondent to recall the Tribunal’s decision of 14 April 2021 should be refused.

1. Background

- 1.1 By way of email dated 19 April 2021, the Respondent had submitted an application to recall the decision of the Tribunal of 14 April 2021 to grant an eviction order in favour of the Applicant in his absence. The application was opposed by the Applicant.
- 1.2 Under Rule 30(9)(c), the Tribunal had fixed a case management discussion to consider whether the decision should be recalled. This decision should be read in conjunction with that issued in respect of application FTS/HPC/CV/21/0219, being an application for civil proceedings, namely, payment of outstanding rent, which was also the subject of an application to recall the decision of 14 April 2021 making an order for payment in favour of the Applicant.

2. The Case Management Discussion

- 2.1 The case management discussion took place on 30 June 2021 by teleconference. The Applicant was represented by Mr Coyle, solicitor. The Respondent was personally present.
- 2.2 The Tribunal heard firstly from the Respondent. He advised that he had failed to appear at the case management discussion on 14 April due to simple error, in that he had believed it had been scheduled for 12pm as opposed to 10am. When he discovered his error, he telephoned the Tribunal and was advised correspondence should be in writing.
- 2.3 He confirmed that he had resided at the property for around 10 years. He advised that he had two children, aged 13 and 7, who resided with him on a part time basis. The former stayed with him from Friday to Sunday, in accordance with a court order and the latter from Thursday to Friday and Sunday to Monday, in accordance with an agreement made with the child's mother. Both children resided with their respective mothers when not with the Respondent.
- 2.4 The Respondent advised he was currently employed as a delivery driver on an ad hoc basis. He was paid cash in hand, retaining the delivery charge imposed by three restaurants with which he worked. His hours and income fluctuated. Last month he took home around £360.00 in income. He had worked as a delivery driver since around September 2019. Prior to this, he had been unemployed and reliant on welfare benefits and borrowing from friends. He currently had no other sources of income, other than loans from friends, but had submitted an application for Universal Credit around two and a half weeks ago. He understood that this could make payment of his housing costs to a ceiling of around £350.00 per month and accepted the rent due to the Applicant was £555.00 per month. He had managed to afford the rent prior to March 2020, when restaurants required to close in response to the COVID-19 pandemic.
- 2.5 He advised that his only communication with the Respondent had been through Whatsapp messages. He did not believe that the manner of communication had been reasonable or appropriate given the COVID-19 pandemic. His mental health had suffered. He had not sought any help in respect of his mental health apart from speaking to a Citizen's Advice Bureau about his current situation. He had not contacted the local authority prior to his most recent tenancy agreement beginning. He had not attempted to make any payment to the Applicant given the manner in which he was told of the intention to sell the property. He accepted that in excess of £6800.00 was due to the Applicant. He could only make payment of approximately £10.00 per week to the debt.
- 2.6 Mr Coyle advised of the Applicant's position. He confirmed that three further rental payments were now due and the total sum outstanding was now £8475.00. The Applicant still wished to sell the property. The property had outstanding finance secured on it and the Applicant was behind on payments as a result of the Respondent's failure to pay rent. The property

was the only property owned by the Applicant which he made available for rent. Mr Coyle confirmed he had not had any communication with the Respondent but was aware there had been Whatsapp messages exchanged between the parties although was unaware of the contents. He submitted that the Respondent had delayed in submitting a request for a recall of the decision until 19 April 2021.

2.7 Both Mr Coyle and the Respondent confirmed that they did not dispute any factual matter stated by the other. The Tribunal adjourned for a short period to consider the matter.

3. Reasons for Decision

3.1 The ability of the Tribunal to grant an application by a party to recall a previous decision made in their absence is governed by Rule 30 of the Chamber Rules. A party is required to set out why, in the interests of justice, the decision should be recalled. The Tribunal considered all written and oral submissions by the Respondent.

3.2 In the absence of the Rules specifying any factors to which the Tribunal was to have regard in determining the application, the Tribunal has taken account of the whole circumstances of the parties, including the reason why Respondent did not appear at the earlier case management discussion and, most importantly in the Tribunal's opinion, whether there was a stateable defence to the Application.

3.3 In the present application, there was no issue with regards to service of the required notice to leave nor the evidence provided of the Applicant's intention to market the property for sale. The Tribunal was mindful that the Coronavirus (Scotland) Act 2020 now required consideration as to whether it was reasonable to issue an eviction order on the basis of Paragraph 1 of Schedule 2 of the Private Housing (Tenancies) (Scotland) Act 2016, being the ground relied upon by the Applicant in the present application. Any defence to the present application therefore appeared to the Tribunal to be solely based on reasonableness.

3.4 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole circumstances in which the application was made.

3.5 There was no factual dispute between the parties. Taking the Respondent's submissions at their highest, the Tribunal did not consider that the circumstances of the application rendered it unreasonable to grant an eviction order. Whilst the Tribunal was sympathetic towards the situation that the Respondent found himself in, the Tribunal placed particular weight on the following factors:-

- The Respondent's children had a primary residence elsewhere;
- The Respondent's low monthly income, even if awarded Universal Credit, appeared to result in the property being unaffordable given the shortfall in the housing costs payable and the rent due;
- A significant debt had already accrued which could not be addressed within a reasonable time;
- The Applicant was suffering financial hardship which necessitated the sale of the property.

3.6 Accordingly, the Tribunal refused the Respondent's application to recall the decision of 14 April 2021, which is adhered to.

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.

Alastair Houston

30 June 2021

Legal Member/Chair

Date