



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/21/1081

Re: Property at 15 Swallow Brae, Livingston, EH54 6GZ (“the Property”)

Parties:

Miss Rebecca Marshall, 35 Morrison Way, Knightsridge, EH54 8LH (“the Applicant”)

Miss Lyndsay McCormack, 15 Swallow Brae, Livingston, EH54 6GZ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 7 May 2021 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under grounds 1 and 12 of Schedule 3 of the Private Housing (tenancies)(Scotland Act 2016 (“the 2016 Act”). The Applicant submitted a Statement of Account, Tenancy Agreement, Notice to Leave and Section 11 Notice in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant Purple Bricks PLC, Solihull were appointed as the Applicant’s agents and submitted further written representations on her behalf.

3. By Notice of Acceptance dated 2 July 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion ("CMD") was assigned.
4. By email dated 21 July 2021 the Respondent submitted a written response to the application.
5. A CMD was held by teleconference on 12 August 2021. The Respondent attended in person. The applicant failed to attend or be represented. The Tribunal continued the CMD to a further CMD.

The Case Management Discussion

6. A CMD was held by teleconference on 5 October 2021. The Applicant did not attend but was represented by Mr Elliot Furlong of Purple Bricks Plc. The Respondent attended in person. Mr Furlong explained that the failure of the Applicant to be represented at the previous CMD had occurred as a result of a colleague who had been representing the Applicant leaving and the date had been overlooked.
7. It was agreed that the parties entered into a Private Residential Tenancy Agreement that commenced on 14 December 2018 at a rent of £625.00 per calendar month. Communication between the parties and the Letting Agents for notices was by email. After some discussion as regards service of the Notice to Leave it was agreed that it had been correctly served by email on the Respondent and the correct period of notice given. It was also agreed that West Lothian Council had been sent intimation of a Section 11 Notice by email on 7 May 2021.
8. Mr Furlong advised the Tribunal that the Respondent currently owed rent in the sum of £2732.68. This sum was agreed by the Respondent.
9. The Tribunal asked Mr Furlong if his company had been instructed to market the property for sale by the applicant. Mr Furlong said that it had not. He did think another company had been instructed but could not say which it was and also thought that the sale was uncertain as there were concerns about the condition of the property. He confirmed a Home Report had not been instructed.
10. The Respondent explained that she was a beauty therapist but had not been working as a result of the Covid pandemic. She went on to say that there had been issues with the property since about November or December 2019. She said the Applicant had replaced faulty storage heaters with standard panel heaters that were very expensive to run. She said that throughout 2020 she had managed to chip away at the rent arrears and they had reduced by December 2020 to £300.00 but more things had been going wrong with the property and there had been a major leak in the bathroom which she said was

falling to bits. The Respondent said that two weeks after the leak had been repaired in November 2020 the shower screen had fallen off and this had been reported to Purple Bricks but it had not been repaired until October 2021 when a new shower rail and curtain was installed. The Respondent said she had continued to use the shower but this had resulted in the bathroom floor being soaked with water and on one occasion she had fallen and cracked several ribs and had been in a lot of pain and required hospital treatment.

11. In response to a query from the Tribunal the Respondent said that she had not wanted to carry out any repairs to the property herself such as putting up a shower rail and curtain or instructing a tradesman to install a shower screen and deduct the cost from her rent as she was scared to do anything to the property herself and because of her broken ribs.
12. The Tribunal noted that the Applicant had stated in her written response that she had been withholding rent due to the condition of the property and queried if she had retained the funds in a separate account. The Respondent explained that she was currently in receipt of Universal Credit and the rent paid amounted to £490.00 per month. She did not have sufficient income to pay the balance of the rent of £135.00 and had not retained any funds.
13. The Respondent advised the Tribunal that she was single and lived alone. She said she had two sons aged 12 and 15 but they lived with their father and did not stay for contact. She confirmed she had been in contact with the local authority homeless unit and thought that if made homeless she would be offered bed and breakfast accommodation at first and her name was on the housing list but they were busy at the moment with applications.
14. For the Applicant, Mr Furlong explained that the Applicant was living in rented accommodation. She was a single parent with one child. She had been furloughed throughout the Covid pandemic and had only recently returned to work on reduced hours. Mr Furlong went on to say the Applicant had been borrowing money from family to cover the mortgage on the property and had been struggling financially. He said the Applicant had sought medical help as she was struggling with anxiety and stress.
15. Mr Furlong indicated that he would have to go through the property file to establish what communication had taken place between his colleagues and the Respondent with regards to the issues raised by her and in particular why it had taken from November 2020 to October 2021 to carry out a repair to replace the broken shower screen. He suggested that the Respondent could have instructed her own repair and deducted the cost from the rent.
16. The Respondent said that she believed the Applicant had failed to carry out repairs at the property because she had served the Notice to Leave and wanted her out of the property. She also said that because of the water that had been leaking on to the floor in the bathroom through not replacing the shower screen there were now slugs coming out from under the bath. The Respondent

confirmed that she had not made any application to the Housing and Property Chamber for an order under the Housing (Scotland) Act 2006.

Findings in Fact

17. The parties entered into a Private Residential tenancy Agreement that commenced on 14 December 2018 at a rent of £625.00 per calendar month.
18. The Respondent is currently due the Applicant rent amounting to £2732.68.
19. The Respondent was sent a Notice to Leave by email on 29 October 2020.
20. The Applicant's agents sent pre action emails to the Respondent dated 1 and 3 December 2020
21. West Lothian Council were given intimation of the proceedings by virtue of a Section 11 Notice sent by email on 7 May 2021.
22. The Applicant owns the property subject to a Standard Security in favour of North Yorkshire Mortgages Limited.
23. The Applicant lives in rented accommodation.
24. She was until recently furloughed due to the Covid pandemic.
25. She has struggled financially and borrowed from family to meet her monthly outgoings.
26. The Respondent is single and lives alone.
27. The Respondent is currently unemployed and in receipt of Universal Credit.
28. There is a shortfall between the rent paid by Universal Credit each month and the rent due amounting to £135.00.
29. Repairs to a shower screen at the property intimated to Purple Bricks in November 2020 were carried out in October 2021.

Reasons for Decision

30. It was agreed that the parties entered into a Private Residential Tenancy Agreement at a rent of £625.00 per calendar month and that as at the date of service of the Notice to Leave and the CMD the Respondent had been in

arrears of rent for three months and on the date of the CMD more than the equivalent of one month's rent was due.

31. It was not disputed that the Notice to Leave and Section 11 Notice had been properly served and the Tribunal was also satisfied that pre-action correspondence had been sent to the Respondent by the Applicant's representatives.
32. Although there was documentation submitted by the Applicant's representatives Slater Hogg & Howison in support of Ground 1 of Schedule 3 of the 2016 Act, Mr Furlong was uncertain at the CMD if it remained the Applicant's intention to sell the property and the Tribunal was therefore not persuaded it had sufficient information to proceed to grant an order on this ground.
33. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 the Tribunal would have granted an order for eviction under Ground 12 of Schedule 3 as on the admission of the Respondent the arrears of rent were not disputed and the necessary procedure had been followed. However, the Tribunal had to consider whether or not it was reasonable in all the circumstances to grant the order and weigh up the circumstances of both parties. The Tribunal found no reason to doubt the veracity of the Applicant's written representations and the oral submissions made on her behalf and was satisfied that she was struggling financially and suffering from anxiety and stress as a result. The Tribunal had some sympathy for the Respondent as although to some extent she may have been the author of her own misfortune by using the shower without either having a shower curtain in place or towels on the bathroom floor to soak up any spillage it was unacceptable even in Covid times that it took 11 months for the Applicant's letting agents to carry out a simple repair or reach an understanding with the Respondent over having the repair carried out. However, it appeared to the Tribunal that even taking account of the Respondent's submissions with regards to the condition of the property the fundamental problem was that the Respondent had insufficient funds to meet the rent due with no likely change in her circumstances arising in the foreseeable future. The Respondent had not taken any steps to seek an order under the Housing (Scotland) Act 2006 and it seemed likely that her rent arrears would continue to increase. The Respondent lives in the property on her own and has made contact with the local authority homeless unit.
34. The Tribunal was satisfied that it had from the written submissions and documents and the oral submissions sufficient information before it to make a decision and weighing up the circumstances of both parties the Tribunal was satisfied that it was appropriate to grant an order for eviction under ground 12 of Schedule 3 of the 2016 Act.

Decision

35. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 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.

**Graham Harding
Legal Member/Chair**

**5 October 2021
Date**