



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/21/1736

Re: Property at 216 Millcroft, South Carbrain, Cumbernauld, G67 2QL (“the Property”)

Parties:

Ms Eileen Gallacher, 24 Morris Crescent, Motherwell, ML1 5NH (“the Applicant”)

Ms Kerry Barr, 216 Millcroft, South Carbrain, Cumbernauld, G67 2QL (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms J Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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 between 20th July and 17th September 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. The Applicant is seeking an eviction order in respect of the Property which is the subject of a tenancy agreement between the parties commencing on 1st July 2018. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 23rd December 2020, and photographic and documentary evidence.
2. Eviction was sought on the ground that the Respondent has breached the terms of the tenancy agreement, by failing to notify the Applicant of the need for repairs or emergencies, failing to allow reasonable access for an authorised purpose, and vandalising or damaging the Property.

3. A Case Management Discussion (“CMD”) took place by telephone conference on 26th November 2021. The Applicant was not in attendance and was represented by Mr Andrew Steven, Solicitor. The Respondent was in attendance. The Respondent said she had been unable to lodge any response to the application as her father had taken a heart attack and passed away very recently.
4. Mr Steven said the Applicant was seeking an eviction order, for the reasons set out in the application. There has not been any communication from the Respondent and no improvement in the situation. Photographs of the state of the Property had been lodged.
5. The Respondent said she has suffered from poor mental health for five years. She has been diagnosed with a bipolar diagnosis, and having people in the house is a problem because it heightens her anxiety. There was a leak under the bath which led to the ceiling falling in. She was unaware that she had to report this and had attempted to have it fixed. Work had begun on this but it halted due to the lockdown. There were health issues in her family that led to isolation. There had been two family bereavements recently. Her children are no longer living with her for various reasons, including the condition of the Property. The Respondent said she had taken advice from the Citizens Advice Bureau (“CAB”) and a housing officer, but she had lost their numbers when her phone became faulty. She thought they had told her she would not get re-homed unless she was homeless, and that her housing situation depended on the outcome of the CMD.
6. Responding to questions from the Tribunal as to whether she was opposing the application for an eviction order, the Respondent said she ‘kind of’ accepted she had breached her tenancy, but she had tried to report repairs, including a leak on the main roof and a faulty boiler, and nothing had been done by the Applicant. She also said she did not understand that it was her responsibility to report issues and thought she had to fix them herself. It was her first private let on her own. She was getting shocks from the light fittings and had tried to contact fire safety but this had been impacted by lockdown. The Respondent said she would like to move to where her children are staying. She has a housing support officer. There had been talk about homeless accommodation if she was to be evicted but much depended on the outcome of the CMD.
7. The Tribunal was not persuaded, on the information before it, that the ground was met. The Respondent said on one occasion that she may have breached the tenancy agreement, and on another occasion that she had breached it, but she said she did not understand her responsibilities. She said she had reported repairing issues that had not been attended to. Even if the ground was met, the Tribunal had significant concerns around the reasonableness of granting an eviction order given the Respondent’s current circumstances, her recent bereavement, her uncertainty about her position, and the lack of support and advice to assist her in considering her options. The Tribunal

considered the best way forward was to adjourn to a further CMD to allow the Respondent to consider her position and

- (i) Take advice from the CAB or a suitable advice agency or solicitor in regard to the application for an eviction order and whether or not she intends to oppose the application;
 - (ii) Take advice from the CAB or a suitable advice agency or solicitor, and the local authority, in regard to her housing options if an eviction order is granted; and
 - (iii) Contact her housing support officer and Social Work for support.
8. A further CMD was scheduled for 25th January 2022. Notification was made upon parties by email to the Applicant's representative and letter to the Respondent on 17th December 2021.
 9. At the CMD on 25th January 2022, which took place by telephone conference, the Applicant was not in attendance, and was represented by Mr Andrew Steven, Solicitor. The Respondent was not in attendance. Mr Steven indicated that he was not aware of having received notification of the CMD. The Tribunal was concerned that there may have been an issue in regard to service of notification of the CMD upon the Respondent. The Tribunal continued the CMD to a further CMD to allow a further opportunity for the Respondent to attend.
 10. Notification of a CMD to take place on 15th February 2022 was served upon the Respondent by Sheriff Officers on 2nd February 2022.

The Case Management Discussion

11. A CMD took place by telephone conference on 15th February 2022. The Applicant was not in attendance and was represented by Mr Andrew Steven, Solicitor. The Respondent was not in attendance.
12. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
13. Mr Steven moved the Tribunal to grant the order. He was not aware of any contact between the parties, or whether there had been any substantive change since the last CMD. The Applicant had not been aware of any reported repairs, as stated by the Respondent at the first CMD. She would have acted upon any notification at the time, had she been informed. No repairs have been carried out at the Property since the application was lodged. The Applicant is keen to have the repairs carried out, after which she may consider selling the Property. Much depends upon insurance and mortgage issues.

Findings in Fact and Law

14.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st July 2018.
 - (ii) Notice to Leave has been served upon the Respondent.
 - (iii) The Respondent has breached terms 17, 19 and 20 of the tenancy agreement by failing to notify the Applicant of repairing issues, failing to allow access for an authorised purpose, and vandalising or damaging the Property.
 - (iv) It is reasonable to grant an eviction order.

Reasons for Decision

15. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
16. Ground 11 of Schedule 3 of the Act provides that it is an eviction ground that the tenant has failed to comply with an obligation under the tenancy. In terms of the tenancy agreement between the parties, the Respondent agreed to notify the Applicant of repairing issues, allow access for an authorised purpose, and refrain from vandalising or damaging the Property. The Tribunal took into account the photographic evidence lodged by the Applicant, and the fact that the state of the Property was not disputed by the Respondent. The Tribunal noted that the Respondent had admitted that she had breached the tenancy agreement, although she said she had reported repairing issues that had not been attended to. In the absence of any further evidence from the Respondent, the Tribunal was unable to find that the Respondent had reported any repairing issues. The Tribunal is satisfied that Ground 11 has been established.
17. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the Property has been in a serious state of disrepair for a considerable time, and that the Applicant requires to get access to repair the Property, which access has previously been denied by the Respondent.
18. Although the Tribunal was concerned about the Respondent's personal circumstances, the Tribunal noted that the Respondent had been keen to leave the Property and possibly to move to a different area, to be closer to her children. In the absence of any further information or appearance by the Respondent, there was insufficient information before it to find that it would not be reasonable to grant the Order. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

19. 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.

H Forbes

Legal Member/Chair

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15th February 2022

Date