



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1974

Re: Property at 2F2 115 Ferry Road, Edinburgh, EH6 4ET (“the Property”)

Parties:

Scottish Midland Co-operative Society Limited, Hillwood House, 2 Harvest Drive, Newbridge, EH28 8QJ (“the Applicant”)

Mr Kenneth Whitson, 8/4 Parkgrove View, Edinburgh, EH4 7QW (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.

Background

The Applicant sought an order for payment of rental arrears and violent profits totalling £6,328.12. The Applicant had lodged with the Tribunal Form F. The documents produced included a Tenancy Agreement, a rental arrears statement, an order for repossession and form AT6.

The Hearing

1. A hearing took place by telephone conference at 10am on 21 December 2021. The Applicant was represented by Mr Runciman, solicitor, of Gilson Gray LLP. The respondent was present and unrepresented.

2. At a case management hearing on 8 November 2021 Parties agree that our starting point must be the findings in fact made by our confrere in the decision issued under chamber reference FTS/HPC/EV/19/3264. Parties agreed that there were arrears of rental totalling £3,611.51. The case calls before us today to determine

(a) The respondent's application for a time to pay direction and

(b) Quantification of the applicant's claim for violent profits

Time To Pay Application

3. The respondent asks for a time to pay direction. He offers to pay by instalments of £50.00 per month. That offer is not accepted by the applicant.

4. We consider the application for a time to pay direction. We take account of the respondent's means and financial commitments. We take guidance from s.1 of the Debtors (Scotland) Act 1987 and consider

(a) the nature of and reasons for the debt in relation to which decree is granted;

(b) any action taken by the creditor to assist the debtor in paying that debt;

(c) the debtor's financial position;

(d) the reasonableness of any proposal by the debtor to pay that debt; and

(e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.

5. If the agreed sum is paid by instalments of £50.00 per month, it will take almost 73 months (just over 6 years) to clear the outstanding sum. It is not reasonable to expect the applicant to wait so long for repayment of an admitted debt. The respondent may have offered all he can afford, but having regard to s.1 of the Debtors (Scotland) Act 1987 we cannot make a time to pay direction. The respondent's application is refused.

Violent Profits

6. The respondent originally asked for violent profits for the period from 7 January 2020 to 9 March 2020. 7 January was the date the First tier Tribunal made an order for repossession of the property. 9 March 2020 is the date sheriff officers carried out an eviction.

7. Before the start of the hearing, Mr Runciman produced a fresh calculation of the sums the applicant says are due. The effect is to reduce the sums sought from the

respondent. The applicant originally sought violent profits calculated at twice the contractual rental. The applicant now seeks violent profits equating to the actual contractual rental figure.

8. The respondent says that he was not evicted, but surrendered possession of the property voluntarily. He produces a letter from the City of Edinburgh Council which confirms that he went into homeless accommodation on 6 March 2020. The applicant argues that he could not apply for alternative accommodation until a charge for removing was served by sheriff officers (on 21 February 2020). He says that the applicant delayed in executing the order made by the First-tier Tribunal on 7 January 2021, and he should not be penalised for that delay.

Our Findings in Fact

9. On 7 January 2020 our fellow legal member of the Housing and Property Chamber made the following findings in fact and findings in fact and in law

- 2.1 . The Proprietor of the Property is the Applicant.
- 2.2 The Respondent was a tenant of the Applicant from around November 2016 when he succeeded to his father's tenancy.
- 2.3 Rent was initially due by the Respondent at the rate of £375.00 per calendar month.
- 2.4 In November 2018, the Applicant served an AT2 form on the Respondent notifying of a rent increase to £650 per calendar month with effect from 28 December 2018.
- 2.5 The Respondent returned a form stating that he intended to challenge the rent increase but no application was made to the tribunal to do so.
- 2.6 The Respondent has stated that he is unable to afford the increased rent of £650.00 per calendar month.
- 2.7 The Respondent has paid rent at the rate of £375.00 per calendar month since 28 December 2018 on the basis of lack of affordability of the increased rent.
- 2.8 The Respondent has not made any application to the tribunal stating that the Property does not meet the repairing standard.
- 2.9 The Respondent has not retained any rent due on the basis of the condition of the Property.
- 3.1 0. The AT6 notice was served on the Respondent on 12 September 2019.
- 3.1.1 The AT6 which was served on the Respondent includes notice that the ground upon which eviction is sought is Ground 8 of Schedule 3 of the 1988 Act.

3.1 2. As at the date of service of the AT6 notice on 12 September 2019 the Respondent was in arrears of rent of £2496.86, which is at least three months' rent lawfully due from the Respondent.

3.1 3. As at 7 January 2020, the Respondent has arrears of rent of £3,611.51 , which is at least three months' rent lawfully due from the Respondent.

3.1 4. The Respondent is not in receipt of any housing or other relevant benefits.

3.1 5. The rent arrears are not a consequence of delay or failure in payment to the Respondents of any housing or other relevant benefits.

Findings in fact and law

4.1 . A notice in the prescribed form under Section 24 of the 1988 Act was served on the Respondent and the Respondent did not refer the notice to the tribunal in the prescribed form, with the effect that the new rent of £650.00 per calendar month took effect as from 28 December 2018 in terms of Section 24(3) of the 1988 Act.

4.2. The rent lawfully due from 28 December 2018 is £650.00 per calendar month.

4.3. Because the tribunal is satisfied that the facts required in Ground 8 of Schedule 5 to the 1988 Act have been established, namely that at the date of service of the notice under Section 19 of the 1988 Act and at the date of the hearing on 7 January 2020, at least three months' rent lawfully due from the Respondent is in arrears, and the arrears are not a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the tribunal must make an order for possession.

10. It has already been judicially determined that by 7 January 2020 there were arrears of rental in the sum of £3,611.51.

11. The respondent attended the First tier Tribunal hearing on 7 January 2020, so he knew that an order for repossession had been granted.

12. The First-tier Tribunal's decision of 7 January 2020 was not sent to the applicant's solicitors (and could not be enforced) until the days of appeal had expired. The days of appeal expired on 7 February 2020. The applicant's solicitors received the order for repossession on 14 February 2020. Sheriff Officers served a charge for removing on 21 February 2020.

13. The respondent removed from the property on 6 March 2020, when the City of Edinburgh Council offered him homeless accommodation.

14. Sheriff Officers carried out an eviction on 9 March 2020, even though the respondent vacated the property three days earlier.

15. The respondent's entitlement to occupy the property ended on 7 January 2020. He continued to occupy the property for a further 58 days, from 7 January 2020 to 6 March 2020. The applicant is entitled to violent profits for that period.

16. The monthly rental for the property at the time the order for repossession was made was £650 per month. The daily equivalent rental is £21.37.

17. If the lease had continued until 6 March 2020, the applicant could expect to receive £1,239.46 from a tenant in rental.

Reasons for decision

18. At the case management discussion, the respondent sensibly conceded that, at 7 January 2020, he owed the applicant of £3,611.51 in arrears of rental.

19. On the facts as we find them to be, the applicant continued to occupy the property for the 58 days from 7 January 2020 to 6 March 2020. He did not pay any rental for the property during that period.

20. The First-tier Tribunal's decision dated 7 January 2020 brought the lease between the applicant and the respondent to an end. The respondent did not appeal the tribunal's decision of 7 January 2020, nor did he seek a review of that decision. The respondent accepted the decision. As a result, his occupancy of the property from 7 January 2020 to 6 March 2020 was unlawful

21. The applicant did not delay in executing the order for repossession. The respondent removed from the property as soon as he was offered alternative accommodation, but he had no title to occupy the property. His lease had come to an end. Any dispute he had with the applicant about the termination of his tenancy was determined by the First-tier Tribunal on 7 January 2020.

22. The Applicant is entitled to violent profits for the 58 days from 7 January 2020 to 6 March 2020.

23. It is reasonable to assess the level of violent profits at the level of contractual rental. We therefore make an order for violent profits in the sum of £1,239.46. We add that sum to the amount of agreed arrears of rental (£3,611.51), and make a payment order in the total sum of £4850.97.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for payment.

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.

Paul Doyle

21 December 2021

Legal Member