



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/21/2931

Re: Property at Flat 8, 67 Seagate, Dundee, DD1 2EH (“the Property”)

Parties:

Mr Iqbal Rahman, 12 Larch Street, Dundee, DD1 5NN (“the Applicant”)

Miss Anna Mickevica, Flat 8, 67 Seagate, Dundee, DD1 2EH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs H Barclay (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 dated 16th November 2021, 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 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant’s representative included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 1st August 2020, copy Notice to Leave dated 10th May 2021, together with evidence of service, copy section 11 notice together with evidence of service, survey correspondence, inspection report, stonemason quotation and roofing report.

Case Management Discussion

2. A Case Management Discussion (“CMD”) took place by telephone conference on 2nd February 2022. The Applicant was not in attendance and was represented by Mr Alex Campbell, Solicitor. The Respondent was in attendance.

3. Mr Campbell moved the Tribunal to grant the order sought. The Applicant wishes to refurbish the building, including a roof replacement, repointing of the chimney and other minor works. Quotes are in place, and the cost of the work has risen due to delay. The roof timbers require to be replaced, and none of the occupants of the building can remain in occupation while the work is carried out as this would be unsafe. One roof has already collapsed. There are 8 to 10 flats in the building. This is a top floor flat.
4. Responding to questions from the Tribunal as to whether the Respondent could move out while the work was done and move back in, Mr Campbell said the Applicant intends to sell the property when the work is complete.
5. Mr Campbell said the Respondent is in rent arrears in the sum of around £8000. An order for payment was granted in a civil action for some of the arrears and a charge for payment has now been served. No payment has been forthcoming and the Respondent is not paying her ongoing rent.
6. The Respondent said she has been struggling with her health for a long time. She has lived in the Property for seven years. She previously lived with other tenants. She always paid her rent until the Covid-19 pandemic began, when she wanted to live alone for health reasons. She said she had not applied for benefits. She understood her behaviour did not seem sensible. Responding to questions from the Tribunal, the Respondent said she is an artist and she is not currently looking for work. She does not feel like working. When she feels like working again, she will paint. She is staying in the Property because she can, and because she does not feel like moving at all. The Respondent said the arrears figure sounded about right. Asked how she expected to pay rent in the future, the Respondent said she does not know what her future is.
7. Responding to questions from the Tribunal, the Respondent said she did not want to give any details of her health conditions, but said she has an appointment on 7th February after which she may require surgery, but she may not. She has had several surgeries over the last five years. Her health is going in the wrong direction. She had hoped to have a resolution. Moving out of the Property would cause her problems physically.
8. The Respondent said there were no problems with the roof above the Property, although she understood there were small leaks elsewhere in the building. She accepted that she could not remain in the Property while the work was carried out, but did not see why she could not return after the work was done.
9. Asked about the reasonableness of paying no rent over a considerable period, and the impact upon the Applicant, the Respondent said this was the result of the condition she was in, and stated that everyone has difficulties.
10. Asked whether she had taken any advice on housing or sought assistance with paying her rent, the Respondent said she had not done so. The Respondent

said she receives some money from the mother which helps to pay her utilities, phone and council tax and there is a small amount left for food. It has been liberating for her to realise that she can live on a small amount. The Respondent said she thought the Applicant's position was reasonable.

11. Mr Campbell summed up by saying it was unreasonable that the Respondent had made no effort to pay her rent. She may be eligible for benefits, particularly if she has health conditions, but she has done nothing to progress this. All the other occupants of the building are moving out as requested. The Applicant has also served notice to leave under Ground 12, so a further application will be made if this application is unsuccessful.

Findings in Fact and Law

12.

- (i) The Respondent has resided in the Property for around seven years, previously with other tenants.
- (ii) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st August 2020.
- (iii) The Applicant intends to refurbish the Property.
- (iv) It would be impracticable for the Respondent to continue to occupy the Property given the nature of the refurbishment
- (v) Notice to Leave has been served upon the Respondent.
- (vi) It is reasonable to grant an eviction order.

Reasons for Decision

13. Ground 3 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to refurbish the property and it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended. The Tribunal is satisfied on the information before it that Ground 3 has been established.

14. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.

15. The Tribunal took into account the circumstances of both parties in considering reasonableness. The Applicant has been waiting for some time to carry out the work, which has not been possible while the Respondent remains in the Property. The Applicant is entitled to receive rent for the Property and this has not been forthcoming, leaving him with a considerable debt. The Respondent has health issues, however, no medical evidence was provided to the Tribunal. While the Tribunal understood that the Respondent wished to keep the details

of her health issues private, it meant the Tribunal had very little information before it. The Tribunal noted that, although the Respondent thought surgery may be required, she also stated it may not happen at all, which suggested a lack of certainty and urgency in the situation. There was no indication of the level of seriousness of the surgery. The Tribunal took into account the fact that the Respondent was not willing to seek benefits which would assist in paying her rent. She has not taken any advice on alternative housing. She does not intend to find work, and the Tribunal was not persuaded on the information before it that she was unable to work. She had no proposals to put forward in relation to paying her rent or addressing the arrears. The Tribunal considered that the situation would continue as it is if the order was not granted, with the arrears continuing to rise.

16. The Tribunal adjourned to consider its decision and decided that the ground was met and it was reasonable to grant the order.
17. On reconvening and informing parties of the decision, the Respondent asked if the order could be delayed for a period of two months to allow her to finish her council tax year and find other accommodation. Mr Campbell opposed this motion on the basis that it has taken a considerable time for the Applicant to get to the position he is in in relation to having the works carried out, and the Respondent has had a considerable period to seek alternative accommodation and benefits.
18. The Tribunal adjourned again to consider the Respondent's motion. The Tribunal decided not to grant the motion, given that the work is now urgent and that the Respondent has had a considerable period, since May 2021, in which to consider her position and make alternative arrangements. The Tribunal did not consider it appropriate or reasonable to increase the period before which the order could be executed to a period of two months, nor had sufficient cause been shown to grant the motion.

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

2nd February 2022
Date