



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

Chamber Ref: FTS/HPC/CV/22/1642

Re: Property at 13 Pitroddie Gardens, Dundee, DD3 9QR (“the Property”)

Parties:

Mrs Irene Bowman, Roger Bowman, 8 Golf Avenue, Monifieth, Dundee, DD5 4AS (“the Applicant”)

Ms Lauren Low, 13 Pitroddie Gardens, Dundee, DD3 9QR (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made requiring the respondent to pay to the applicants the sum of Eight Thousand Six Hundred Pounds (£8,600)

Introduction

These are linked applications between the same parties. The first application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Procedural background

A CMD in both cases took place by teleconference on 6 October 2022 at 10.00 am. Reference is made to the CMD Note issued then. The respondent attended that hearing and advised that the applications are not to be opposed. She accepted that there are substantial rent arrears and that this is a basis for the eviction sought. The respondent advised that she has secured alternative accommodation. She lives with

her partner, Mr Shaun Jamieson, and his 6 year old daughter. The property has been made available from Dundee City Council but requires renovations to be undertaken. She did not have an entry date but it is expected to be around 5 weeks' time. The respondent stated that both she and her partner are in paid employment. They can afford to repay the rent arrears at a rate of around £350 per month, possibly more. After discussion at the CMD it was agreed by both parties that both applications should be continued for:

1. The respondent to confirm the date of her voluntary departure from the property.
2. The applicant to make a timeous Rule 14A amendment application to increase the sum sought in the payment order application.
3. The respondent to lodge an application for a time to pay direction.

The applicant did lodge a Rule 14A amendment application but no further submission were received from the respondent and no application for a time to pay direction was made by her.

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The further CMD took place by teleconference at 2pm. All parties joined and represented their own interests. The Respondent did not oppose the applications. She consented to orders being made in both cases.

Findings and Reasons

The property is 13 Pitroddie Gardens, Dundee DD3 9QR.

The applicants are Mrs Irene Bowman and Mr Roger Bowman who are the heritable proprietors of the property and the registered landlords. The respondent is Ms Lauren Low who is the tenant.

The monthly rent stipulated in the tenancy agreement was £725 per month. The respondent has fallen into significant arrears of rent. As at the time that the applications were submitted to the Tribunal in late May 2022, rent arrears had risen to £4,250. Throughout the time the application has been pending the applicants have made a Rule 14A amendment application. This was made and intimated to the respondent on 2 November 2022 when the rent outstanding had risen to £8,600.

The applicants are entitled to recover arrears of rent due under and in terms of the written lease between the parties. The Tribunal therefore granted a Payment Order against the respondent in the sum of £8,600. Reliance was placed upon the unchallenged detailed rent statement. No time to pay direction application was made or insisted upon by the respondent due to the applicants confirming that if her stated repayments of £350 were made then they would not seek to carry out diligence to

recover the sums by any other means. If the respondent does not make such payments then the applicants ought to have the security of the ability to enforce the payment order fully.

The current eviction proceedings are based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.

The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 5 April 2022. It states an application will not be submitted to the Tribunal for an eviction before 4 May 2022. On the face of it, the Notice is one day short of the requirements set out in Section 62 of the Act, which requires 48 hours to be added on to allow for service and an additional period of one day. The period of 48 hours for deemed service is however rebuttable and the Tribunal accepted that the Notice to Leave was served personally upon the respondent on the day that it is dated, namely 5 April 2022. In particular the Tribunal relied upon the written and signed acknowledgement by the respondent on that date that she received the Notice to Leave then.

The Tribunal was satisfied that more than three consecutive months of rent remains unpaid by the respondent. This establishes ground 12. Ground 12 as originally drafted was a mandatory ground for eviction. All eviction grounds are now discretionary. The Tribunal proceeded to consider the issue of reasonableness.

The respondent did not oppose the eviction application. In fact she consented to it. She and Mr Jamieson are both in full time employment. They stay in the let property with Mr Jamieson's child who is 6 years of age. The respondent confirmed that alternative accommodation has been allocated by Dundee City Council and that the keys have already been made available. They have vacant possession of that other property. They will not be homeless.

In all of the circumstances the Tribunal determined that it was reasonable to grant the eviction order sought by the applicants.

The Tribunal noted a formal undertaking by the respondent to provide the Tribunal administration, by 5pm on Friday 9 December 2022, with the full postal address of her new property.

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.

Richard Mill

9 December 2022

Legal Member/Chair

Date