



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/22/2082

Re: Property at 54 Macdonald Terrace, Lochgilphead, PA31 8TE (“the Property”)

Parties:

Mrs Lyndsay Martin, 7 Dun More Avenue, Argyll, Kilmorry, Lochgilphead (“the Applicant”)

Mr Kevin Agnew, Mrs Shiree Agnew, UNKNOWN, UNKNOWN (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant of the sum of One Thousand Five Hundred and Thirteen Pounds and Eighty Pence (£1.513.80)

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.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondents by way of service by advertisement in terms of Rule 6A. A Certificate confirming that the relevant Notice to the respondents was placed on the Chamber website has been produced disclosing intimation for the relevant period, with the notice commencing on 12 September 2022.

A CMD in both cases took place by teleconference on 17 October 2022 at 10.00 am.

The applicant was represented by Miss Kara MacGregor-Duke. The respondents did not participate in the hearing.

Findings and Reasons

The property is 54 Macdonald Terrace, Lochgilphead PA31 8TE.

The applicant is Mrs Lyndsay Martin who is the heritable proprietor of the property and the registered landlord. The respondents are Mr Kevin Agnew and Mrs Shiree Agnew.

The parties entered into a private residential tenancy which commenced on 24 March 2020. The monthly rent stipulated in the tenancy agreement was £485 per month.

The eviction proceedings are based upon ground 1, contained within Part 1, Schedule 3 to the 2016 Act, namely that the applicant intends to sell the property.

The civil proceedings before the Tribunal relate to a payment order application in which the applicant seeks to recover arrears of rent.

The applicants are entitled to recover arrears of rent due under and in terms of the written lease between the parties. Throughout the time the application has been pending the applicants made a Rule 14A amendment application. As at the date of hearing, the rent outstanding is £1,813.80. The application is supported by an up to date detailed rent statement which reflects the arrears of rent relied upon. The Tribunal found this a credible and reliable document and attached weight to it.

A deposit of £300 was paid by the respondents at the commencement of the tenancy and the applicant intends to seek return of this in part implement of the rent arrears. In the circumstances the sum of £1,513.80 was sought.

Ground 1 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary.

The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 1 November 2021. It states an application will not be submitted to the Tribunal for an eviction before 4 May 2022. The Notice was prepared in accordance with the requirement under the Act.

The Tribunal was satisfied that the applicant has produced evidence that the applicant intends to sell the property. She cannot afford to continue to maintain the property. Sales particulars for the property, which is being marketed by SBS Solicitors have been produced and the sale is currently being advertised live on the internet. This establishes ground 1. The Tribunal proceeded to consider the issue of reasonableness.

The Tribunal was advised that the respondents are believed to have vacated the property on or about 4 September 2022. This information is confirmed within a Sheriff Officer's report dated 6 September 2022. The applicant subsequently went to the property and found the windows and door open and the keys for the property had been left within it. The Tribunal was satisfied that the respondents have no active interest in the property.

The respondents have not opposed the eviction application. There is no evidence that either of them have any disabilities or other vulnerabilities.

There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicant. It is likely that in the event of an eviction order being granted that the local authority will make alternative accommodation available to the respondents if they require it.

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

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

17 October 2022

Legal Member/Chair

Date