



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/22/2920

Re: Property at 45A South Street, Armadale, West Lothian, EH48 3ET (“the Property”)

Parties:

Mr Alan Millar, Mrs Irene Millar, 2 Beechwood Gardens, Blackburn, West Lothian, EH47 7PS (“the Applicant”)

Miss Charise Watson, 45a South Street, Armadale, West Lothian, EH48 3ET (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.

Background

1. By application dated 17th August 2022 the applicants seek an order for eviction, relying on ground 12 in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicants lodged the following documents with the application:
 - Copy tenancy agreement
 - Letter to the respondent with Notice to Leave and Guidance dated 5th May 2022
 - Rent statement
 - Letter to respondent dated 25th July 2022

- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003 dated 17th August 2022
3. The present application was conjoined with an application seeking an order for payment against the respondent under Tribunal reference FTS/HPC/CV/2923.
 4. A case management discussion (“cmd”) was assigned for 28th November 2022.

Case management discussion – 28th November 2022- teleconference

5. The applicants were represented at the cmd by Mr Bryon, solicitor of Sneddon Morrison solicitors. The respondent attended on her own behalf.
6. Mr Bryon advised that arrears had increased to £10,770. He explained that the respondent had not paid any rent since March 2022. Mr Bryon requested that the Tribunal grant an order for eviction.
7. Prior to the cmd the respondent had lodged written representations stating that there were various issues of disrepair in the tenancy. The respondent’s position was that the property was not wind or watertight and in particular there was water ingress via the roof and windows in the property. She stated that this had led to mould growth which was impacting on the health of the occupants. There had also been an issue with the boiler in the property which the tenant had paid to have repaired. The respondent also stated that there had been no adequate smoke alarms, issues with the electrical sockets, an unworking shower and problems with the fabric of the building which had led to pieces of plaster falling in the interior of the property.
8. Mr Bryon accepted that there may have been some issues with the condition of the property however, any failure to carry out repairs had been due to the respondent’s failure to engage with the applicants. He submitted that the respondent had failed to allow access for repairs to be carried out. He also referred to a report from Stephen Allison, a technical officer in the private sector team at West Lothian Council. Mr Allison had carried out an inspection in April 2022 and found no evidence of ongoing dampness and water ingress.
9. As the respondent had lodged written representations and photographs and other documents relating to issues of disrepair prior to the cmd the Tribunal had anticipated that she would seek to oppose an order for eviction. However, the respondent explained at the cmd that she did not oppose an order for eviction

- being granted. She advised that she had previously sought advice from the homelessness team at West Lothian Council. She had an active application with the council for housing and was awaiting further contact from them. The respondent advised that the property had been affected by various issues of disrepair since the tenancy commenced in May 2019. She explained that the monthly rent was £795. She received full housing benefit throughout the tenancy. She explained that the issues with dampness and water ingress had resulting in her spending £140 per week in heating. This had left her unable to pay her rent. She had been withholding rent since February 2022 due to the repairs however, the withheld funds had been used to cover her energy costs.
10. The respondent advised that she lived with her four children aged 11 months, 3, 11 and 13 years old and that the condition of the tenancy had affected the health of her children, causing respiratory problems and bronchitis.
 11. The respondent advised that communications between herself and the applicants were usually by text message. She had received requests to allow the landlord access, but she had been unclear that the purpose of the request had been to carry out repairs and had therefore not agreed to allow access.
 12. The respondent confirmed that rent in the sum of £10770 had not been paid since the commencement of the tenancy.

Findings in fact

13. Parties entered in a Private Residential Tenancy agreement with a commencement date of 27th May 2019.
14. Monthly rent due in terms of the agreement was £795.
15. The respondent has been in arrears since January 2020 and has not paid any rent since March 2022.
16. Arrears as at 28th November 2022 amounted to £10,770.
17. Ground 12, in schedule 3 of the 2016 Act has been established.

Reasons for the decision

18. The Tribunal had regard to the application and the documents lodged by the applicants. The Tribunal also took into account oral submissions at the cmd.

19. The Tribunal was satisfied that the arrears at the property amounted to £10,770 as at the date of the cmd and that as there had been arrears in excess of three months, ground 12 had been established.

20. The Tribunal required to consider whether it was reasonable to grant an order for eviction. The Tribunal noted the high level of arrears, which continued to rise. The Tribunal gave particular weight to the respondent's oral submission that she did not wish to oppose an order for eviction being granted.

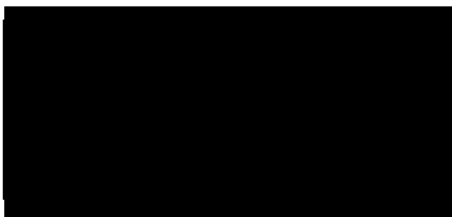
21. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for eviction.

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.



Legal Member/Chair

28th November 2022

Date