



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/23/0170

Re: Property at 121 St Andrews Drive, Fraserburgh, AB43 9BG (“the Property”)

Parties:

Mr Colin Todd, 156 Finnact Street, Greenock, PA16 8HY (“the Applicant”)

Mr Michael McKenzie, Miss Judy Ritchie, 121 St Andrews Drive, Fraserburgh, AB43 9BG (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant was present personally.

The Respondents were not present or represented on this occasion.

3. Background

This Application previously called as a CMD. The Respondents were represented by Adrienne Forsyth, Housing Support Worker, Housing First Service, Aberdeenshire Council and the Respondent Mr McKenzie was present. The Respondent Miss Ritchie was not present as she was taking a relative to hospital.

The Applicant raised there had been a payment to rent on the day before that Hearing of £100 and the current arrears as at that Hearing was £3330.78

There was discussion with the Applicant and it was agreed that the Application proceeded on the Grounds of Rent Arrears namely Schedule 3, Part 3, Ground 12 only and there was no objection by either party to this.

The Respondents had recently engaged Local Authority Housing Support and there were a number of referrals being made to look at the Respondent's benefits, income and circumstances. The Support worker was working with the Respondent's actively and the Tribunal considered having regard to this support, the overriding objective of the Tribunal and the fact that the requirements of Rent Arrears Pre- Action Requirements (Coronavirus) (Scotland) Regulations 2020 had not been fully complied with it was reasonable to allow an opportunity for housing support to look at matters.

The Tribunal therefore adjourned that CMD to today's CMD Hearing.

4. Preliminary Matters.

The Tribunal raised that there had been no contact from either party to the Tribunal updating on the current position.

The Applicant advised he had been in in constant contact with Adrienne Forsyth, Housing support officer on behalf of the Respondents. This had been the case until 2 weeks ago when she went on holiday but no further payments had been made to rent and arrears since a payment of £100 made on 13th June 2023.

There were no other preliminary matters raised.

I did have one comment, I think this case last called on 26/4/23 not June. The payments the applicant took us through, from my notes, were

£100 "day before hearing" which would be 25/4/23

£200 on 10/5/23

£ 100 on 13/6/23

and nothing subsequent to that.

5. Case Management Discussion.

The Applicant submitted that he sought an Eviction Order on the Grounds of rent arrears on the basis that the rent arrears as at this Hearing was £5030.78. The Applicant said that he had been in constant contact with Adrienne Forsyth, Housing support officer. His understanding was that the Housing Support Officer had confirmed that the Respondent's income was over the threshold for housing cost assistance. He was then told that the Respondent Mr McKenzie had also secured a job and this was commencing on a full time basis. The Applicant was advised that given that change of circumstances the Respondents were going to start to pay £300 every 2 weeks from 2nd June 2023.

The Applicant said that there has been no payments to rent or arrears since the payment of £100 on 13th June 2023. He understands that the Housing support Officer has made multiple calls to the property in person with no answer and multiple emails and telephone calls have been made to them without success. The Respondents are young, both working and have no dependents. The current rent arrears due to the Applicant as at 29th July 2023 is £5030.78. The Applicant confirmed he has a mortgage on the property and seeks to obtain an Order for Eviction against the Respondents. The Applicant said at the last CMD Hearing that the mortgage on the property was £344.87 per month. On the last occasion the Tribunal was told the Respondent, Mr McKenzie suffered with anxiety and depression and was due to see his GP regarding his medication. The Tribunal understands he is now in employment and that the Respondents are 24 years of age and 22 years of age, respectively. Matters regarding their income and benefit entitlement appear to be clarified.

1. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondents at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondents had been served personally by Sheriff Officer, Mr McKenzie, the Respondent appeared on the last occasion and both Respondents had engaged a Housing support worker who was also present on the last occasion. No written representations, or updated information had been lodged by the Respondents or their Housing Officer. There was no appearance at Hearing.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 29th March 2022.**
- 5. A Notice to Leave was sent to the Respondent on 6th December 2022.**

6. In terms of the Rent Arrears Pre- Action Requirements (Coronavirus) (Scotland) Regulations 2020 whilst there had been communication between parties without signposting prior to the first CMD the Respondents had engaged a Local Authority Housing Support Officer. The Applicant had been fully communicating with this Housing Support Worker.
7. The Tribunal was satisfied on balance that the Respondents were in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as rent under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
8. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to £5030.78 Monthly contractual rent is £500.
9. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit. The Tribunal understood that the Housing Support Officer had maximised entitlement and now both Respondents were in employment.
10. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
11. Further the Tribunal was satisfied that the rent arrears were of a substantial nature. The last payment to rent or arrears had been received of £100 on 13th June 2023.
12. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
13. The Tribunal noted the Local Authority under the 2016 had been notified.
14. On the evidence available to the Tribunal the Respondents had no dependents residing with them. Whilst they were young and the Respondent Mr McKenzie was seeking GP support for mental health and engaging with Housing support they had been unable to meet rent liability for some time and the rent arrears for the property were increasing significantly. The Respondent's has been unable to settle their financial position regarding the rent and rent arrears since the last CMD Hearing and arrears had continued to accrue with no payments made. The Applicant whilst he has a number of properties has a mortgage on this property and was continuing to obtain no rent or income on same. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
15. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.
16. The Application is subject to the Cost of Living (Tenant Protection)(Scotland) Act 2022.

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.

Karen Kirk

4th August 2023.

Legal Member/Chair

Date