



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 ('the Act')

Chamber Ref: FTS/HPC/EV/23/0222

Re: Property at 69 Newhailes Crescent, Musselburgh, EH21 6EF ("the Property")

Parties:

Mrs Margaret Imrie, Roselea Care Home, 175 Stenhouse Street, Cowdenbeath, Fife, KY4 9DX ("the Applicant")

Ms Teillan Clarke, 69 Newhailes Crescent, Musselburgh, EH21 6EF ("the Respondent")

Tribunal Members:

David Preston (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order for Eviction be granted in favour of the applicant.

1. By application dated 22 January 2023 Mr Keith Imrie, the applicant's Attorney in terms of Power of Attorney by Mrs Margaret Isobel Imrie dated 16 December 2014 and registered with the Public Guardian on 5 February 2015, applied to the tribunal under rule 109 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the regulations') seeking eviction of the respondent under grounds 1 and 12 of Schedule 3 to the Act.
2. Along with the application, the tribunal was provided with:
 - a. Tenancy agreement between the parties which took the form of a Short Assured Tenancy but, being effective from 1 October 2020 was truly a Private Residential Tenancy Agreement.
 - b. Correspondence between the parties regarding arrears of rent.
 - c. Notice to Leave dated 14 July 2022.
 - d. Royal mail proof of delivery dated 15 July 2022.

- e. Section 11 notice together with confirmation of receipt.
 - f. Table of payments of rent and detail of arrears.
 - g. Registered Power of Attorney dated 16 December 2014, registered with the Public Guardian on 5 February 2015.
3. By decision dated 17 March 2023, convener of HPC having delegated powers for that purpose, referred the application under rule nine of the Rules to the tribunal. A Case Management Discussion (CMD) was scheduled for 9 May 2023 to be held by telephone conference.

Case Management Discussion

4. Mr Keith Imrie appeared on behalf of the applicant. The respondent attended on her own behalf.
5. The respondent indicated that she did not intend to challenge the application and accepted the arrears of rent as set out in the table of payments. She advised that she had been in discussion with the local authority and had been told to remain in the property until such time as an eviction order was granted against her. She said that she was unable to afford the rent at the rate of £1000 per month and was unable to make any significant payments towards the arrears which had accrued. She had attempted to make payments when she was able but accepted that the arrears continued to increase. She had attempted to find alternative accommodation but had been unable to do so. She had two children aged six and eight and was in receipt of universal credit, part of the rent was covered by Universal Credit, but not all. She has applied for discretionary housing payments to cover the difference but has not been able to obtain this.
6. Mr Imrie confirmed the information contained in the application and supporting papers. He explained that his mother, for whom he was Attorney, was in a care home. Her pensions and the rent which had been received from the property had been sufficient to cover approximately 75% of care home costs but debts were mounting in respect of those costs due to the failure of the tenant to maintain regular monthly payments at the agreed rate. He therefore considered that it was necessary for the house to be sold. He explained that his mother had lived in the property prior to being admitted to the care home.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, to determine the application at the CMD.
8. In addition to being satisfied that the grounds for eviction have been established, the tribunal is required to be satisfied that it is reasonable in all the circumstances that an order for eviction be granted. On the basis of the information provided, the tribunal considered that the balance of reasonableness fell in favour of the

applicant. The respondent had been advised by the local authority that she would be considered for re-housing in the event that an eviction order was granted against her. Her inability to maintain the rent payments have resulted in mounting debts due to the care home being incurred by the applicant.

9. The tribunal was satisfied that the necessary notices had been duly served in terms of the act and that the requirements of the pre-action protocols had been complied with and accordingly determined to grant the order for eviction. The arrears of rent were not as a result of the delay or consequence of a failure the payment of a relevant benefit. As at the date of the application, arrears of rent in excess of three months had accrued. The respondent accepted that arrears in excess of three months rent remained outstanding as of the date of the CMD.

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.

David Preston

9 May 2023