



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/23/0956

Re: Property at 21f Easter Langside Gardens, Edinburgh, EH22 2FF (“the Property”)

Parties:

Capita Trust Company LTD As Trustee for Housing Fund For Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Ms Kelsey McGrouther, 21f Easter Langside Gardens, Edinburgh, EH22 2FF (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 7 August 2023, by teleconference. The Applicant was represented on the call by Mr Caldwell, of Patten & Prentice LLP, solicitors. The Respondent was on the call in-person.

- Findings in Fact

The relevant facts of the case were not in dispute, as follows:

1. The Respondent lets the Property from the Applicant in terms of a private residential tenancy with a start date of 24 September 2020.
2. In terms of the original tenancy agreement, rent of £660 was payable on the first day of each month.
3. The rent has been raised on two occasions, by the statutory notice procedure: from 1 April 2021, to £673.86 per month; and, from 1 June 2022, to £700.14 per month.
4. The Respondent has been in arrears of rent since 1 October 2020.
5. On 2 September 2022, the Applicant sent a notice to leave to the Respondent, stating that it intended to rely on ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application for an eviction order to follow.
6. At that time, the Respondent was in arrears of rent of £8,775.67.
7. On the same date, the Applicant sent a letter complying with the requirements of the pre-action protocol prescribed by the Scottish Ministers ('the pre-action protocol').
8. A further notice to leave was sent by the Applicant to the Respondent, on 26 May 2023, after this application was raised, stating that it intended to rely on ground 12A of Schedule 3 to the Act in any application for an eviction order to follow.
9. On the same date, a further letter was sent by the Applicant in compliance with the requirements of the pre-action protocol.

10. At the time the second notice to leave was sent, the Respondent was in arrears of rent of £10,126.79.

11. On the date of the CMD, the Respondent was in arrears of rent of £10,817.21.

12. The Respondent is 27 and lives in the Property on her own.

13. The Respondent is not able to afford to pay the ongoing rental charge, or make any meaningful offer to reduce the arrears.

14. It is reasonable for an eviction order to be granted against the Respondent.

- Reasons for Decision

15. As a preliminary matter, the Tribunal was asked by the Applicant to allow the application to be amended to rely on ground 12A of Schedule 3 to the Act and, to grant permission for that ground to be included in the application in terms of s.52(5)(b) of the Act.

16. The Respondent did not object to the application being amended and the ground being included. The Tribunal noted that a notice to leave had been served referring to that ground, and the notice period required in relation to that notice had run its course more than a month prior to the CMD. The Tribunal also noted that the Respondent did not deny that the requirements of ground 12A in regard to the arrears owed were met. There would be no meaningful purpose served by requiring the Applicant to raise a separate application on the revised ground. The arrears were already substantial and there was no indication that the Respondent would be able to reduce them while a fresh application was raised and determined. Indeed, the arrears had been 'substantial', within the terms of ground 12A, at the time the original notice to leave was served. The Tribunal therefore considered that it was fair and reasonable for the amendment to be allowed and the application to be permitted to proceed in reliance on ground 12A.

17. The arrears being admitted by the Respondent, the Tribunal therefore turned to the question of whether it was reasonable for the application to be granted. The Respondent indicated that she had attempted to access the extraordinary support provided by the Scottish Government via the local authority following the pandemic; but stated that she had been unable to, since she required information from the Applicant that was not forthcoming in time. She stated that she had asked for this information and had heard nothing for 6 months, by which time the funding had been fully allocated. She also indicated that she had attempted to enter into an arrangement regarding her arrears with the Applicant, but that this had included a suggestion that she might bring in a co-tenant to help pay some of the arrears (£300 per month, was the figure suggested). The Applicant had refused to enter into this arrangement. The Respondent was candid in stating that she had managed her finances badly, which had led to the current situation. She is in full-time employment; but stated that she would need to give this employment up if she was made homeless, as the level of charge for temporary accommodation for persons in employment is unaffordable.

18. The Applicant in response observed that the Respondent's arrears had started to accrue almost immediately after the start of the tenancy. On that basis, it appeared that the tenancy was fundamentally unaffordable for her. It was not reasonable to expect the Applicant to allow her more time in the hope that she would find a way of addressing the issue, when no realistic plan had been found to date. The pre-action protocol had been complied with. The Respondent had had ample time to make a realistic attempt to address the arrears.

19. The Tribunal agreed with the Applicant that the undisputed facts of the case supported the conclusion that the tenancy was unaffordable for the Respondent. She had been in arrears for almost the entirety of the tenancy. The arrears now stood at a very high figure. The offer to take in a lodger (whether this be cast as a co-tenant or a sub-tenant) was not acceptable to the Applicant: and was, at best, speculative. Even if this had proceeded on

the basis described, and assuming no breaks in payment from the third party, it would have taken 2-and-a-half years to clear the arrears. It was not reasonable to expect the Applicant to take the risk of accepting that arrangement, on the basis that it would take that length of time to recover the arrears. The Respondent has had many months to start to address the arrears, but has not been able to reduce them; indeed they have risen since the original notice to leave was served. Against that background, truly, it is in neither party's interests to continue the tenancy.

20. The issue of whether or not the Applicant's delay prevented access to government funding is not ultimately relevant to the question of reasonableness. If the information required was so essential, the Respondent should have followed up her initial email to the Applicant requesting it and clarifying its importance. She did not do so. In any event, the funding in question was intended to address arrears accrued as a result of the pandemic. There is no suggestion that that was the reason for the arrears in this case.

21. The Tribunal therefore concluded that it was reasonable for the eviction order to be granted.

- Decision

Eviction order granted.

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.

Nairn Young

20th August 2023

Legal Member/Chair

Date