



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/21/0715

Re: Property at 4f Newbigging, Musselburgh, East Lothian, EH21 7AH (“the Property”)

Parties:

Ms Megan Houchin, 1 Castlehill, Elphinstone, East Lothian, EH33 2LU (“the Applicant”)

Ms Siobhon McManus, 4f Newbigging, Musselburgh, East Lothian, EH21 7AH (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Colin Campbell (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

1. Background

An application was made dated 22 March 2021 in terms of Rule 109 of the Chamber Rules for a Private Residential Tenancy Eviction Order. Along with the application form, the Applicant lodged the following documents:

- Copy of Notice to Quit (it was in fact a Notice to Leave)
- Copy section 11 Notice
- Copy Rent Statement
- Copy receipts for costs incurred
- Various WhatsApp and Email exchanges between the Applicant and the tenant

A paper apart was also lodged detailing the eviction grounds. The original paper apart referred in error to eviction grounds of the Housing (Scotland) Act 1988.

2. The Tribunal wrote to the Applicant on 31 March 2021 seeking further information. The Tribunal wished sight of the tenancy agreement, confirmation of the eviction grounds as those narrated in the paper apart referred to the Housing (Scotland) Act 1988 eviction grounds rather than those narrated in the Notice to Leave. The Tribunal also sought details of service of the Notice to Leave and the section 11 Notice.
3. In addition, the Tribunal requested a clear rent statement, further information on the alleged breaches of the tenancy agreement and evidence of this. The Tribunal also asked the Applicant to confirm that she had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 in terms of eviction ground 12 and referred the Applicant to the relevant guidance on the Scottish Government website including template letters. The Applicant was advised that compliance with these Regulations would be taken into account by the Tribunal when deciding whether it is reasonable to grant an eviction order.
4. The Applicant responded by email on 5 April 2021 with a copy of the tenancy agreement, an amended paper apart with the correct eviction grounds, a screenshot of the email sent with Notice to Leave and associated documentation, a screenshot of the email sent to the Local Authority with the section 11 Notice, an updated rent statement, confirmation that the alleged clauses breached were detailed in the amended paper apart and that evidence had been submitted with the original application. She also dealt with the subject of the pre-action requirements on the amended paper apart. The Tribunal wrote to the Applicant on 20 April 2021 advising that the legal member had accepted the application and also advised:

“[N]otwithstanding any other issue which the Tribunal may require you to address them about, you should be in a position to address them on what you have done to comply with the Rent Arrears Pre-Action Requirements; and further why it would be reasonable to grant an order for recovery of the Property”.

5. A Case Management Discussion was arranged by teleconference on 28 May at 10.00 and notice of this was intimated to parties. The Respondent was asked to submit any written representations by 18 May 2021. The Respondent was also advised that:

“The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

6. No written representations have been received from the Respondent.
7. Case Management Discussion

The Case Management Discussion took place today by teleconference. The Applicant attended on her own behalf and there was no appearance by or on behalf of the Respondent. The Applicant advised that the current level of rent arrears was in the sum of £2511.40 as at today's date. The direct payments of rent and rent arrears had ceased with the last payment having been made on 28 March 2021. The Applicant had attempted to find out what was happening with the payments by contacting Universal Credit and by contacting the Respondent directly. Universal Credit refused to give the Applicant any information and the Applicant currently did not have the Respondent's telephone number. Approximately three weeks ago the Applicant attended at the Property to make enquiries as to rent payments and was asked to leave by the Respondent.
8. The Applicant advised that she had applied for direct payments of rent as a last resort. Universal Credit had determined the payments towards rent arrears in the sum of £40.99 per month.
9. The Applicant does not know why the direct payments of rent and rent arrears have stopped.
10. On questioning about the Respondent's personal circumstances, the Applicant believes the Respondent to reside at the Property as a single mum with three high school age children, one son and twin daughters. She understands her to have been working prior to lockdown possibly in some kind of care work. The Respondent advised that she was returning to work on several occasions but she does not think that she did so. The Respondent was shielding during lockdown possibly as a result of one of her daughter's having had cancer. She understands her to have been in receipt of Universal Credit throughout the duration of the tenancy.
11. The Tribunal asked for the Applicant's position as to whether she had complied with the terms of the Rent Arrears Pre-Actions Requirements (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations"). The Applicant admitted that she had been unaware of the 2020 Regulations but, on her evidence, the Applicant nonetheless appeared to have followed most of the Pre-action requirements informally with correspondence.
12. The application alleged a number of breaches of terms of the tenancy agreement on which evidence was given both orally at the case management discussion and in the papers provided by the Applicant.
13. There had been no payment of the deposit of £800 by the Respondent. The Respondent had not had money to pay the deposit since the commencement of the tenancy. By the Applicant's own admission she was more concerned about the shortfall in and absence of monthly rent payments.

14. There was an alleged breach of the Respondent's duty to keep the Property adequately heated in contravention of Clause 16 of the tenancy agreement. The Property had a gas combi boiler and a gas cooker although there was an electric shower and an electric fire. The Applicant advised that there was a debt on the meter of £80 all towards the standing order for the provision of gas to the Property indicative of the Property having been without gas for some time. On questioning, the Applicant admitted that there was no evidence of damage to the Property due to lack of heating such as condensation etc.
15. There were two instances of flooding the shop downstairs one being as a result of an overflowing drain in the kitchen which the Respondent had not advised the Applicant of and the other involving a leak from the washing machine which had only been purchased a couple of months previously and was alleged to have been caused by a seal on the washing machine having been ripped due to the fault of the Respondent. The Respondent had also apparently stated that the flooding had been caused by a defect in the boiler but the Applicant had found no evidence of this. These instances were said to be a further contravention of Clause 16.
16. The Respondent was said to have not notified the Applicant of either of the flooding instances or the alleged broken boiler in contravention of Clause 17 of the tenancy agreement.
17. The Respondent was said to have breached Clause 19 of the tenancy agreement by not allowing access for the repair to the washing machine to be carried out.
18. The Respondent was alleged to have breached Clause 20 of the tenancy agreement by allowing her son to smoke cannabis in the Property and to have breached Clause 34 of the tenancy agreement by permitting persons to smoke in the Property on several occasions.
19. The Respondent was alleged to have breached Clause 26 of the Tenancy Agreement by not paying for utilities promptly causing the Applicant to pay £80 to in order to have a gas safety inspection carried out.
20. There was an alleged breach of Clause 20 of the tenancy agreement by the Respondent carrying out decoration in the Property without prior consent from the Applicant.

21. Findings in Fact

- The parties entered into a tenancy agreement which commenced on 17 January 2020.
- The Respondent fell into arrears of rent from the outset of the tenancy.
- The Applicant applied for direct payments of rent from Universal Credit which commenced in July 2020 but stopped in March 2021.

- The Applicant also applied for payment towards rent arrears from the Respondent's Universal Credit and was paid £40.99 per month from September 2020 until March 2021.
- The Applicant has not been paid anything towards the rent or rent arrears payments since 28 March 2021.
- The Respondent was in a breach of a number of Clauses of the tenancy agreement as detailed above.

22. Reasons for Decision

The Coronavirus (Scotland) Act 2020 makes all eviction grounds discretionary. The Tribunal took account of the written evidence received from the Applicant today along with the oral evidence. The Tribunal found the Applicant to be a credible witness although unreliable at times in reference to dates etc. There was nothing before the Tribunal challenging the evidence before the Tribunal. It is unfortunate that the Respondent did not attend today's case management discussion or otherwise engage with the Tribunal process such as lodging written representations. In coming to its decision the Tribunal had to weigh up all the relevant factors to decide whether granting the order was reasonable.

23. The Coronavirus (Scotland) (No. 2) Act 2020 requires the Tribunal to consider the extent to which a landlord has complied with pre-action requirements before raising the proceedings for possession. The pre-action requirements are set out in The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations"). The 2020 Regulations apply to applications for eviction orders under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") made by the landlord on or after 6 October 2020. The application in this case was dated 22 March 2021.
24. The 2020 Regulations provide the pre-action requirements for private residential tenancies as follows:
- "4(2)The provision by the landlord to the tenant of clear information relating to-*
- (a) the terms of the tenancy agreement,*
 - (b) the amount of rent for which the tenant is in arrears,*
 - (c) the tenant's rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and*
 - (d) how the tenant may access information and advice on financial support and debt management.*
- (3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of-*
- (a) future payments of rent, and*
 - (b) the rent for which the tenant is in arrears.*
- (4) The reasonable consideration by the landlord of-*
- (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,*
 - (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and*

(c) any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed in accordance with paragraph (3)."

25. While the Applicant admitted that she had been unaware of the 2020 Regulations the Tribunal found that she had in fact complied with most of the pre-action requirements informally.
26. The Tribunal took account of the Respondent's personal circumstances as described by the Applicant.
27. The Tribunal requires to balance the Respondent's personal circumstances with the fact that the rent payments had rarely been paid in full. The Tribunal also took account of the fact that the payments of rent and rent arrears had ceased on 28 March 2021 without any explanation from the Respondent. Communications between the parties appeared to have broken down. At the last visit the Applicant gave evidence that her hall carpet had been removed. She is suffering from the stress of not getting paid any rent and not knowing what is happening to the Property. She is also a single mum with children.
28. The alleged breaches of the tenancy agreement were felt to be relatively minor and would not, in themselves have been enough for the Tribunal to have granted the order.
29. The Tribunal considered it had enough information before it in order to make a decision and that the procedure had been fair.

29. Decision

To grant the order for possession in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

28 May 2021

A.M.

2021

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