



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/23/0134

Re: Property at 31 Lintmill Terrace, Aberdeen, AB16 7SR (“the Property”)

Parties:

Mr Samson Ayorinde and Mrs Abimola Ayorinde, 26 Little Trace Avenue, Southam, Warwickshire, CV47 0ND (“the Applicants”)

Miss Lisa Watt, 31 Lintmill Terrace, Aberdeen, AB16 7SR (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 31 Lintmill Terrace, Aberdeen, AB16 7SR under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 16 January 2023 the Applicants’ letting agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 12 September 2019, numerous emails between the parties and emails between Mr Ayorinde and Aberdeen City Council, a rent statement a letter and fee estimate dated 15 February 2023 and an email dated 19 April 2023 addressed to Aberdeen City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeen City Council.
3. By email of 16 February 2023 after enquiries from the Tribunal in relation to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and whether the Applicants wished to amend in light of that legislation the Applicants' letting agent advised that they wished to proceed with the application as lodged. Accordingly the application proceeded on Grounds 1 (the Landlord wishes to sell) and Ground 12 (rent arrears).
4. On 11 May 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
5. On 19 June 2023 the Tribunal enclosed a copy of the application to the Respondent and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 25 July 2023. This paperwork was served on the Respondent by Roger Ewen, Sheriff Officer, Aberdeen on 19 May 2023 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 25 July 2023 by way of teleconference. Ms Sonia Richardson from Lett's and Co Properties, Lettings Agents appeared on behalf of the Applicants. Ms Watt appeared on her own behalf.
7. Ms Richardson explained she had been asked by the Applicants to serve a Notice to Leave on the Respondent due to her rent arrears. They just wanted to sell the Property as they could not afford to pay the mortgage. She advised the Respondent was in arrears of £4668.87. The monthly rent of £550 was being paid by Universal Credit now. She had tried to get the Respondent to enter into a prepayment arrangement to clear the arrears but the Respondent never did so despite numerous promises. They had corresponded with Aberdeen City Council to try to get payment from the Tenant Grant Fund. The Tribunal noted the terms of the numerous emails between Lett's and Co Properties and the Respondent seeking payment of the arrears, the emails with Aberdeen City Council regarding the Tenant Grant Fund, the Notice to Leave dated 14 October 2022, the letter and fee estimate from Howie and Co dated 15 February 2023 regarding the sale of the Property and the Section 11 Notice to Aberdeen City Council. By the time the Notice to Leave was served by email on 14 October 2022 the Respondent was in arrears of £4800. The Tribunal noted that in terms of Clause 8 of the tenancy

agreement the rent was £550 per month and that in terms of Clause 4 service on the notice could be made by email.

8. Ms Watt wholly acknowledged the arrears and took full responsibility for the arrears. She confirmed the full rent was now being met by Universal Credit. She had been struggling financially. She had been advised by Citizens Advice not to pay anything towards the arrears until the eviction order had been granted. She explained she had an 18 year old son who lived between her and his father. Her sister had recently died and she was hoping to become the kinship carer for her sister's son. Ms Watt accepted that she had made numerous agreements with the letting agents but had not kept to these. She explained she had registered with Home Hunt to try to find another home, but hadn't actively been looking since February/March after her sister had died. She accepted the arrears were her own fault. She advised her mother had £1200 in a fund for her, but that she would not give this to Ms Watt unless it was agreed with the Applicant that the Respondent would not be evicted. She had another £800 in savings. She advised that she was willing to pay £140 per month towards the arrears and could probably pay £500 in a lump sum payment if she was allowed to stay in the property.
9. Ms Richardson in response submitted that she had spoken to Ms Watt on numerous occasions about her arrears. She felt the Respondent would make promises to pay towards the arrears but would never actually do so. She advised the Applicants had been so good with the Respondent and tried to help her. However things had got to the stage now where the Applicants just wanted to sell.

Reasons for Decision

10. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
 - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
11. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1 (Landlord wishes to sell) and Ground 12 (three months rent arrears).
12. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

13. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 1 is 84 days and in the case of Ground 12 is 28 days.
14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondent is in three months' rent arrears with an accompanying rent statement and states the Landlord wishes to sell due to being unable to pay the mortgage due to the arrears. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 8 January 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 15 October 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 84 days. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Richardson and Ms Watt. The Tribunal considered that the Respondent had not disputed the basis for the application and accepted responsibility for the arrears. The Respondent was in substantial rent arrears and although these were not increasing due the rent being met in full through Universal Credit, it was clear from the documentation lodged that she had been given numerous opportunities to bring the arrears under control by making an arrangement to pay towards the arrears. However the documentation also showed that despite the Respondent making various promises to pay she had never kept to these. There are no outstanding benefits issues. The Tribunal accepted that the correspondence also showed that the Applicants were struggling with the mortgage of the Property and wanted to sell it. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by both parties, that the factual basis of the application had been established. Cases under Grounds 1 and 12 of Schedule 3 of the 2016 Act were met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeen City Council had also been served.
16. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the relevant circumstances of the case. In this case the Respondent accepted she was in arrears and that they were her own fault. The Applicants' letting agent had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. They had regularly contacted the Respondent since arrears started to arise in an attempt to get her to address the arrears. Unfortunately the Respondent had not done so. The arrears were placing the Applicants in financial difficulties. It would not be reasonable to expect the

Applicants to continue to bear that level of arrears. There were no outstanding benefits issues. The Tribunal considered the Respondent lived with her adult son. Although the Respondent had not been actively looking for accommodation since about February/March the Tribunal noted she had registered with Home Hunt to secure alternative accommodation and could no doubt continue to look for accommodation. The balance of reasonableness in this case weighted towards the Applicants who were entitled to regain possession of the Property to sell it against the background of struggling with the mortgage due to rent arrears.

17. In the circumstances the Tribunal considered in terms of Grounds 1 and 12 of Schedule 3 that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

18. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

S Evans

Shirley Evans

29 July 2023

Legal Chair

Date