



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/0592

Re: Property at 4/2 31 St Andrews Street, Glasgow, G1 5PB (“the Property”)

Parties:

Mrs Lynne Gray Richmond, Mr Robert Anderson Richmond, 9 Caiyside, Edinburgh, EH10 7HN (“the Applicants”)

Mr Charles Eyoma-Murray, 4/2 31 St Andrews Street, Glasgow, G1 5PB (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be against the Respondent for payment to the Applicants the sum of One Thousand Nine Hundred and Fifty Five Pounds (£1,955); with interest thereon at the rate of 4% per annum until payment; and subject to a time to pay direction requiring payment at a rate of £170 per month with the first payment due within 7 days

Introduction

1. These are linked applications between the same parties. The first application seeks an eviction order and is under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. Service of the applications and intimation of the Case Management Discussions (CMDs) was effected by Sheriff Officers on the respondent on 25 May 2023. A CMD hearing on both cases took place by teleconference on 7 June 2023 at 2.00 pm.

3. The evidential hearing on both applications took place by teleconference on 19 September 2023 at 10.00 am. The applicant was represented by Susan Grierson-Rattray of Clarity Simplicity Limited Solicitors. The respondent joined the hearing and was represented by Rachel Scott of Legal Services Agency.

Findings and Reasons

4. The tribunal attached weight to the entirety of the unchallenged documentary evidence which was found to be both credible and reliable.
5. Ultimately, there was agreement both applications were unopposed by the respondent.
6. The property is 4/2, 31 St Andrews Street, Glasgow G1 5PB. The applicants are Mrs Lynne Gray Richmond and Mr Robert Anderson Richmond. They are the heritable proprietors. The respondent is Mr Charles Eyoma-Murray who is the tenant.
7. The applicants have let the property as student accommodation. The respondent entered into an agreement with the applicants in September 2020 to occupy one room in the property, together with the use of shared services, in particular the lounge, kitchen, bathroom and storage facilities.
8. A document entitled "Single Tenancy Agreement" was entered into between the parties. The document purports to be an assured tenancy but cannot be. It was not legal to enter into such a tenancy after 1 December 2017. All of the necessary prerequisites exist for the existence of a private residential tenancy under the 2016 Act.
9. The private residential tenancy between the parties commenced on 7 September 2020. The parties agreed that the respondent would pay £400 per month.
10. The respondent has fallen into arrears of rent throughout the subsistence of the duration of the lease. At the time that the applications were submitted to the tribunal, rent arrears were £1,975. Throughout the time that the application has been pending the arrears have decreased marginally and at the date of the hearing the sum of £1,955 was outstanding. Those arrears are evidenced by an unchallenged credible and reliable detailed rent statement which the tribunal attached significant weight to.
11. As at today's final hearing, the respondent accepted that the sum of £1,955 in rent arrears was due. An application for a time to pay direction was lodged in which the respondent made an offer to repay at the rate of £170 per month. That application was not opposed on behalf of the applicants. The principal sum will take less than 12 months to pay. This is reasonable.
12. The applicant is entitled to recover arrears of rent due under and in terms of the written lease between the parties. The tribunal granted a payment order against

the respondent in the sum of £1,955, subject to a time to pay direction of £170 per month. The parties agreed that the first payment should be made within 7 days.

13. In the application the applicants sought interest at the rate of 8% per annum from the date of citation until payment. Such a request is equivalent to a crave for judicial interest which has no application to the First-tier Tribunal. The Administration of Justice (Scotland) Act 1972, Section 4 as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 covers the payment of judicial interest in the Sheriff Court and these provisions have not been extended to the tribunal. The payment of a judicial rate of 8% is no statutory basis for the tribunal. Moreover, the contractual basis for the application of interest is specified at 4% in the written agreement entered into. It was accepted on behalf of the respondent that interest at 4% per annum should be imposed by the tribunal.
14. The eviction application is based upon the applicants' intention to sell the property, which is ground 1, contained within Part 1, Schedule 3 to the 2016 Act.
15. The tribunal found that the notice to leave upon which the eviction application proceeds is valid. This is not challenged. It is dated 22 February 2022. This states that an application would not be submitted to the tribunal for an eviction before 31 August 2022. The notice is compliant with the requirements set out in Section 62 of the Act. There is evidence of Sheriff Officer service of the notice to leave made upon the respondent on 24 February 2022. The required 6 month notice was given to the respondent. The service of the notice to leave was substantially prior to the Cost of Living (Tenant Protection) (Scotland) Act 2022 coming into force.
16. Documentary evidence to support the applicant's intention to sell the let property was submitted in advance of the final hearing. Affidavits executed on 11 September 2023 by both applicants had been provided. Evidence of their instructions to Messrs Turcan Connell dated 8 September 2023 were provided in respect of the sale of the property. Additionally, an agency agreement with Slater Hogg & Howieson, Estate Agents, dated 29 August 2023 was provided.
17. The applicants purchased the property in 2009 for their daughter to live in. They have let the property for a number of years since she moved on. They are now both retired. They have no desire to continue as landlords in the current economic climate and the property is not close by geographically. The tribunal was satisfied that the applicants have a genuine motive and intention to sell the let property.
18. The tribunal found that ground 1 was established. There was no challenge to this on behalf of the respondent.
19. The tribunal proceeded to consider the issue of reasonableness. The tribunal found that the most significant factor is that the respondent did not oppose the eviction. It was not suggested that the making of an eviction order was

unreasonable. It was therefore accepted that the making of an eviction order was reasonable.

20. The applicants have a genuine wish to sell the property and cease to be let the property. They should not be forced to continue to be landlords.
21. There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 notice having been issued by the applicant. In the event of an eviction order being granted the local authority has an obligation to make alternative accommodation available to the respondent.
22. In all of the circumstances, the tribunal determined it was reasonable to grant the eviction order sought by the applicants.
23. There was further agreement between the parties that the standard 30 day period for enforcement of the eviction be extended to a period of 3 months from the hearing. Accordingly the tribunal specified the eviction cannot be executed before 19 December 2023.

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.



19 September 2023

Legal Member/Chair

Date