

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

Chamber Ref: FTS/HPC/CV/23/0708

Re: Property at 119 Westergreens Avenue, Kirkintilloch, Glasgow, G66 4AS (“the Property”)

Parties:

Mr John Hutchinson, Mrs Paula Hutchinson, 2 Luggie Grove, Kirkintilloch, Glasgow, G66 3AP (“the Applicant”)

Miss Terri Anne Conn, 119 Westergreens Avenue, Kirkintilloch, Glasgow, G66 4AS (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order against the Respondent for payment to the Applicants the sum of Two Thousand Four Hundred and Eighty Pounds (£2,480)

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 in the Rule 109 case was by Sheriff Officers on 26 May 2023. Service in the Rule 111 case of was by Sheriff Officers on 16 May 2023.

3. The CMD hearing on both conjoined cases took place on 16 June 2023 at 2.00 pm. The applicants were represented by Ms Sharon Cooke of Coda Estates Limited. There was no appearance by or on behalf of the respondent.

Findings and Reasons

4. The property is 119 Westergreens Avenue, Kirkintilloch, Glasgow G66 4AS. The applicants are Mrs Paula Hutchinson and Mr John Hutchinson who are the heritable proprietors and registered landlords. The respondent is Terri-Anne Conn who is the tenant. A private residential tenancy was entered into between the parties which commenced on 28 March 2022. The rent stipulated was £850 per month.
5. The respondent has fallen into significant arrears of rent throughout the subsistence of the duration of the lease. At the time that the Rule 111 application was submitted to the tribunal, rent arrears were £2,480. Throughout the time that the application has been pending the arrears have increased though the applicant has not made a timeous Rule 14A amendment application to increase the amount sought to be recovered. The arrears now outstanding in the sum of £4,430 are however evidenced by an unchallenged credible and reliable detailed rent statement which the tribunal attached significant weight to.
6. The applicant is entitled to recover arrears of rent due under and in terms of the written lease between the parties. The tribunal therefore granted a payment order against the respondents in the sum of £2,480. There is no opposition by the respondent and no time to pay direction application has been made by the respondent.
7. The tribunal found that the notice to leave upon which the eviction application proceeds is valid. It is dated 3 April 2023. This states that an application will not be submitted to the tribunal for an eviction before 4 May 2023. The notice is compliant with the requirements set out in section 62 of the Act. There is evidence that the notice to leave was delivered to the respondent by email on 3 April 2023. The required 28 day notice was given to the respondent.
8. The Rule 109 eviction application is founded upon two grounds:-
 - Ground 11 – the respondent has failed to comply with an obligation under the tenancy, namely: section 17 of the tenancy agreement, ‘reasonable care’ and section 35 of the tenancy agreement, ‘pets’.
 - Ground 12 – the tenant has been in rent arrears for three or more consecutive months.
9. It is submitted that the property consists of several health and safety fire risks. Photographs of the condition of the property are founded upon by the applicant. These are accepted as credible and reliable by the tribunal. These show multiple rooms which are full of possessions and in a disorganised state. This

includes a bicycle in the kitchen and the washing machine in the centre of the room. There are a large number of items around the gas boiler. All floors are untidy causing difficulties in moving through the property and escaping from the property in the event of fire. It is noted that the boiler is surrounded by combustible materials. There are combustible items left dangerously close to the cooker. This is a breach of section 17 of the lease.

10. There are multiple cats (and kittens) in the let property, none of which have been approved by the applicant. No permission has been sought or provided. This issue was reported to the applicants by a neighbour. The cats have been witnessed by the applicants' representative at the property at the time of inspection. There are insufficient steps being taken to deal with the cats' litter and areas of the property are soiled. This is a breach of section 35 of the lease.
11. The tribunal was satisfied that terms of the tenancy have been breached. The tribunal was satisfied that more than three consecutive months of rent was outstanding at the time that the notice to leave was served and also remains unpaid by the respondents. This establishes grounds 11 and 12.
12. All eviction grounds are now discretionary. The tribunal proceeded to consider the issue of reasonableness.
13. The respondent has been in communication with the applicant's representative and was well aware of the hearing. She is not opposed to leaving the property accepting that she cannot afford to live there. She intends to seek local authority housing but needs an eviction order to progress such an application. She resides in the property with her daughter aged 15 years. She is known to be employed part time as a security escort. There are general concerns about the respondent's mental health though no medical evidence is available to evidence this.
14. It is not reasonable to expect the applicants to maintain the tenancy for the respondent given the rent arrears and failure to care for the property.
15. 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 respondents.
16. The tribunal found that the rent arrears pre-action protocol has been evidenced. Other smaller alternate properties have been offered to the respondent though refused. Support has been given.
17. In all of the circumstances, the tribunal determined it was reasonable to grant the eviction order sought by the applicant.

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.

R Mill

16 June 2023

Legal Member/Chair

Date