



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/3637

Re: Property at Flat 1/1 2 Newton Place, Glasgow, G3 7PR (“the Property”)

Parties:

KPM Estates Limited, 23 Park Circus, Glasgow, G3 6AP (“the Applicant”)

Mr Iain MacLeod, Flat 1/1 2 Newton Place, Glasgow, G3 7PR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property and superceded extract of that order until 3 April 2023.

Background

1. The Applicant submitted an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property
2. By decision dated 31 October 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Notice of Acceptance was intimated to the Applicant’s representative on 1 November 2022. The Tribunal intimated the application to the parties by letter of 12 December 2022 and advised them of the date, time and conference call details of today’s CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 2 January 2023. No written representations were received by the Tribunal.

The case management discussion

4. The CMD took place by conference call. The Applicant was represented by Mr Jarvie and the Respondent participated personally. The Respondent was opposed to the application for an eviction order on the basis that he would be made homeless if the order was granted. He was in full time employment and had no difficulty in paying rent. His circumstances have changed and he is now the full time carer for his brother. He had to give up full time employment and is now in receipt of universal credit. The housing element of universal credit is £495 per month. He accepted that substantial rent arrears have accrued. He is waiting on his brother's care package being reassessed. As matters stand, he accepted that this tenancy and in fact other private tenancies are outwith his reach. He is unable to meet the ongoing rent of £900 and cannot make any proposals to repay the rent arrears. He was unable to confirm whether the updated rent statement produced is accurate and will need to check his bank statements. He has not been in contact with the local authority regarding alternative accommodation. The Applicant's representative explained that the rent arrears are substantial and equate to more than 18 months of rent. The arrears started to accrue in April 2021. The Respondent contacted the Applicant by email on 18 July 2022 to advise that his circumstances had changed and he was no longer in employment. Until that point, there had been no engagement from the Respondent. The last payment towards the rent account was on 30 November 2022 in the sum of £490. No proposal has been made for repayment of the arrears. It was submitted that it was reasonable in all of the circumstances to grant the order for eviction.
5. The Respondent provided his email address and gave his consent to the Tribunal corresponding with him by email.

Findings in Fact

6. The parties entered into an assured tenancy, the initial term of which was 1 April 2005 to 1 October 2005.
7. Rent was payable by the Respondent at the rate of £900 per month.
8. The Applicants' representative served a Notice to Quit and the Notice in terms of Section 19 of the Housing (Scotland) Act 1988 on the Respondent by recorded delivery on 22 February 2022.
9. As at the date the Notices were served, the Respondent was in arrears of rent in excess of 3 months.

10. As at the date of this case management discussion, the Respondent was in arrears of rent in excess of 3 months.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent's circumstances having changed, the tenancy is no longer sustainable by him. He is unable to meet the ongoing rental charge and cannot repay the arrears of rent. Although the Respondent was unable to confirm the precise amount of rent arrears due, he did not dispute that the rent arrears are substantial. The Notice to Quit and Notice of Proceedings were served on the Respondent almost one year ago. The Tribunal must balance both parties' interests. In circumstances where the tenancy is not sustainable by the Respondent, the Tribunal was satisfied that it was reasonable to grant the order evicting the Respondent from the property. In light of the personal circumstances of the Respondent, the Tribunal recognised that he may require more time to remove from the property. The Tribunal superceded the extract of the order until 3 April 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.

Legal Member/Chair

2 February 2023

Date