



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0309

Re: Property at Flat 1/2, 1 Branksome Park, Longside Road, Oban, PA34 5JZ (“the Property”)

Parties:

Mr James MacDonald, Mrs Sheila MacDonald, Sydeewood, Croft Road, Oban, PA34 5JL (“the Applicants”)

Mr Graham Wilson, Flat 1/2, 1 Branksome Park, Longside Road, Oban, PA34 5JZ, and Ms Lesley Lyons, ADDRESS UNKNOWN (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicants were entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 27 January 2023 the Applicants’ representatives, Clarity Simplicity Limited, solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the first named Respondent from the property. Under Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a Copy of a Notice to Leave, correspondence to the Respondents, certificate of Service and a Section 11 Notice in support of the application.
2. Following correspondence between the Tribunal and the Applicant’s representatives the application was amended to add the Second named Respondent as a party.

3. By Notice of Acceptance dated 28 April a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned. The Tribunal issued directions to the Applicants’ representatives to produce proof of service of the Notice to Leave on the Second named Respondent.
4. By email dated 15 May 2023 the Applicants representatives provided proof of service of the Notice to Leave on the Second named Respondent.
5. Intimation of the CMD was served on the First named Respondent by Sheriff Officers on 31 May 2023.
6. By email dated 13 June 2023 the Applicants’ representative submitted further written representations on behalf of the Applicants.

The Case Management Discussion

7. A CMD was held by teleconference on 29 June 2023. The Applicants attended in person supported by their daughter-in-law Linda MacDonald and represented by Ms Linzi McQuade from the Applicants’ representatives. The Respondents did not attend nor were they represented.
8. By way of a preliminary matter the Tribunal noted that although the application had been amended to add the Second named Respondent as a party it did not appear that the case papers had been served on her. It did appear however that she was aware of the proceedings as she had submitted to the Applicants a letter confirming she had vacated the property and had wanted to be removed as a tenant. She had also said she had separated from the First named Respondent and did not wish to disclose her address for concerns about her safety. Ms McQuade confirmed this to be the case and asked that the application proceed without further involvement of the Second named Respondent.
9. The Tribunal noted from Ms McQuade that the Respondents had stopped paying rent in April 2022 and that by December 2022 arrears of £3850.00 had accrued. Ms McQuade went on to say that at the date of raising the proceedings the arrears had risen to £4950.00 and that since then two months rent had been paid. Mrs Macdonald advised the Tribunal that in total three months rent had been paid since April 2022 and Ms McQuade confirmed that at the date of the hearing 13 months rent was due amounting to £7150.00 the last payment having been received in March 2023.
10. Ms McQuade confirmed that Sheriff Officers had served the Notices to Leave on the Respondents at the property on 15 November 2022 and that the First named Respondent remained in occupation. She confirmed that a Section 11 Notice had been sent to Argyll and Bute Council on 3 March 2023.
11. With regards to it being reasonable to grant the order sought Ms McQuade advised the Tribunal that the First named Respondent had exhibited ongoing

aggressive behaviour towards the Applicants and that this had been reported to the police. She went on to say that the Applicants were retired and living on the state pension and a small occupational pension and were reliant upon the rental income from the property. She said that the loss of income was causing the Applicants a high level of anxiety and they were struggling financially.

12. Ms McQuade explained that she had little information as to the First named Respondent's circumstances. She said that he had previously been in employment but it was unknown if he was in receipt of Housing Benefit. If he was it was not being passed on to the Applicants. She said she was aware that the First named Respondent had appeared in the Sheriff Court and had been involved in criminal activity. She believed he was living on his own. The Applicants thought that there might be someone else staying at the property as a man had been seen coming out of the property with him and a car had been parked near the property overnight.

13. Ms McQuade confirmed that the rent had been paid up until the time the Second named Respondent had left the property. She said she was not aware of the first named Respondent having any disabilities and Mr MacDonald advised the Tribunal that the First named Respondent had previously worked as a landscape gardener but had lost his job. Ms McQuade did not know if the First named Respondent had approached the local authority homeless unit for accommodation. She confirmed that he had not made any proposals to clear the arrears. She asked the Tribunal to grant the order for the eviction of the Respondents.

Findings in Fact

14. The parties entered into a Private Residential tenancy that commenced in January 2020 at a rent of £550.00 per calendar month.

15. The second named Respondent moved out of the property in May 2022.

16. The Respondents fell into arrears of rent following the Second name Respondent moving out of the property.

17. Notices to Leave were served on the Respondents by Sheriff Officers on 15 November 2022 under Ground 12A of Schedule 3 of the 2016 Act.

18. At the time of service of the Notices to Leave the Respondents owed rent of £3850.00.

19. At the date of the CMD the rent owed had increased to £7150.00.

20. The Respondents were provided with pre-action correspondence dated 15 November 2022 by the Applicants' representatives.

21. The Applicants have suffered financial hardship as a result of the loss of rental income from the property.

22. The First named Respondent has exhibited aggressive behaviour towards the Applicants.

Reasons for Decision

23. The Tribunal was satisfied from the documents produced that the Second named Respondent had removed herself from the property and that she had no interest in defending the proceedings. The failure to intimate the case papers on the Second named Respondent was not the fault of the Applicants or their representatives and justice would not be served by continuing the application for that purpose.

24. The Tribunal was satisfied from the documents produced and the oral submissions that the parties had entered into a Private Residential tenancy that had commenced in about January 2020 at a rent of £550.00 per calendar month. It appeared to the Tribunal that the arrears had started to accrue once the Second named Respondent had removed from the property.

25. The Tribunal was satisfied that valid Notices to Leave had been served on the Respondents by Sheriff Officers under Ground 12 A of the 2016 Act and that proper intimation of the proceedings had been given to the local authority by way of a Section 11 Notice.

26. The Tribunal noted that the Second named Respondent had submitted that she wanted to be relieved of the tenancy. The Tribunal also noted that the First named Respondent had not submitted any written representations or attended the CMD despite being given that opportunity. The Applicants were in attendance and the Tribunal was satisfied from the documents produced and the oral submissions that they were suffering financial hardship as a result of the loss of rental income from the property and were also clearly upset at the difficulties they had experienced with the First named Respondent. Taking everything into account and particularly given the very substantial level of rent arrears the Tribunal was satisfied that it was reasonable to grant the order sought.

Decision

27. The Tribunal having carefully considered the information before it and being satisfied it had sufficient information to make a decision without the need for a hearing finds the Applicants entitled to an order for the eviction of the Respondents from the property.

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

**29 June 2023
Date**