



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/20/2565

Re: Property at 35 The Playfair, 1 Donaldson Drive, Edinburgh, EH12 5FA (“the Property”)

Parties:

Mr Campbell Kinnear, Mrs Jill Kinnear, 2 Links View, Cruden Bay, Peterhead, AB42 0RF, represented by Mr Michael Kemp of Messrs Thorntons (“the Applicants”)

Miss Krisztina Beata Fodor, Mr David Robertson Lennox, 35 The Playfair, 1 Donaldson Drive, Edinburgh, EH12 5FA, represented by Miss Esme McLeod of the Community Help & Advice Initiative (“CHAI”) (“the Respondents”)

Tribunal Members:

Maurice O'Carroll (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession of the Property should be granted to the Applicants.

Background

1. An application for an Order for Eviction with full supporting documentation was lodged by Messrs Thorntons with the First-tier Tribunal on 11 December 2020. Due to Covid-19 restrictions, a Hearing was convened which was before the Tribunal consisting of the Legal Member and an Ordinary Member. The Hearing was conducted by means of a telephone conference on 18 February 2021 commencing at 10am.
2. Mr Kemp appeared on behalf of the Applicants. The Respondent were represented by Miss McLeod. For part of the Hearing (until 12 noon), the Respondents were also present on the telephone conference call. There were two observers who took no active part in proceedings, namely Mr Andrew Wilson (Housing and Money Advice Centre) and Mr Declan O'Brien (clerk with the Housing and Property Chamber).

3. The application was brought in terms of Ground 12 of Schedule 3 of the 2016 Act. Ordinarily, that would be a compulsory ground for eviction. However, as a result of the Coronavirus (Scotland) Act 2020, that compulsory ground was converted to a discretionary ground for consideration by the Tribunal.

Proceedings at the Hearing

4. On the morning of the Hearing at 08.45hours Miss McLeod provided a contract for the supply of services between Mr Lennox and Scottish Canals, a Standing Order mandate in favour of the second Applicant in the sum of £1,500 payable on 26 February 2021 and an email from the Benefits Agency (Discretionary Housing Payments). The reason for their lateness was that CHAI had not been approached by the Respondents until 15 February 2021, three days prior to the Hearing. Despite being late, the documents were considered by the Tribunal and the Applicant's representative.
5. Miss McLeod moved for a postponement of the Hearing at the outset of proceedings in light of her recent instruction. This was opposed by Mr Kemp. The Tribunal had on 16 February 2021 already refused a written application for postponement. The Tribunal held a brief adjournment while it considered the renewed application. Upon resumption, it once again refused the application for postponement on the basis that the proceedings had been known about since December 2020. The grounds for seeking the postponement were the same as had been put forward two days earlier and nothing had changed. The applicants had chosen to wait until 15 February 2021 to seek assistance from CHAI and had allowed the date for written representations to pass without submitting anything further. They could not now rely upon their failure to engage with proceedings to disrupt the Hearing which had been properly convened with due notice having been provided.
6. On resumption of proceedings, Mr Kemp outlined the main points of the application. He stressed that in a tenancy which has so far lasted nearly 14 months, there had been rent arrears in 12 of those. Their difficulties paying what is quite a high rent commenced even before the advent of the Coronavirus pandemic. He doubted that the contract for services produced was a finalised document since it had not been signed and it contained amendments to the start date. Even if it were a final document, he doubted that the Respondents would in fact be able to make rent payments in terms of the lease between the parties. The lump sum payment of £5,000 referred to in the DHP correspondence was clearly stated to be discretionary (and therefore not guaranteed). He doubted whether it would in fact be paid if Mr Lennox was now earning what he said he earned. There had been a total of six promises broken in the lead up to the application being lodged whereby the Respondents had undertaken to pay rent arrears and ensure that rental payments would be made timeously in future. This had been followed up by a further two broken promises to the same effect since December 2020. On behalf of his clients, the Applicants, Mr Kemp made it clear that he insisted on the Order being granted.
7. Miss McLeod for the Respondents provided further background to the defence to the Recovery proceedings. She explained that Mr Lennox had required to change

employment at the start of the tenancy. Unfortunately, due to the pandemic, other job offers which he was able to secure as an IT consultant were withdrawn. Miss Fodor had been a personal trainer. Her work had ceased as a result of the pandemic, along with other jobs she had secured with Caffe Nero and Costa Coffee. As a result, she was not working at present. Mr Lennox was anxious to point out that an Order for Eviction against him might affect his credit rating and therefore his prospects of employment with Scottish Government agencies.

8. Miss McLeod submitted that with Mr Lennox's new services contract which would be paid at the rate of £350 per day, in combination with the discretionary payments that would be paid from DHP (£5,000 lump sum plus £1,000 per month for the period January to June 2021), the Respondents would be in a position to meet rental payments from now on and also to pay down the arrears at the rate of £1,500 per month (hence the Standing Order mandate). She asked the Tribunal not to grant the Order sought.
9. At its own instance, the Tribunal queried the Notice sent to the local authority in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003. The form provided to it did not name the Respondents. Mr Kemp told the Tribunal that his firm sent the form to City of Edinburgh Council on 7 December 2020. The form which was sent in did in fact name the tenants against whom proceedings had been raised (the Respondents). On the basis of Mr Kemp's professional responsibility to the Tribunal, the Tribunal accepted that the form had been validly sent to the relevant local authority and therefore the application could proceed. Mr Kemp undertook to send a copy of the properly completed form to the Tribunal within 7 days.

Findings in fact

10. The parties entered into a Private Residential Tenancy Agreement on 17 December 2019. The rent payable was £2,350 per month, payable on the 20th of each month.
11. The Respondents made the first rental payment in December 2019, but thereafter immediately fell in to difficulties in meeting further rental payments as they fell due. There were efforts made by the Respondents to pay rent arrears, particularly in October 2020, but they failed to clear them entirely at any point after February 2020 to date.
12. The updated schedule of payments presented to the Tribunal by the Applicants demonstrated that out of the 13 months that the tenancy has endured, they have been in arrears for 12 of them. By the time of the hearing the rent arrears amounted to £7,550
13. The Applicants wish to insist on their right to gain possession of their property. The necessary grounds for eviction have been made out by the Applicants.
14. The necessary Notice in terms of section 11 of the 2003 Act was validly sent to the relevant local authority on 7 December 2020.

15. Service of the Notice to Leave was validly made on both Respondents on 21 April 2020. The extended notice period of six months expired on 22 October 2020.

Reasons for Decision

16. The Tribunal had considerable sympathy for the situation in which the Respondents found themselves, a situation exacerbated by the Coronavirus pandemic. However, it placed considerable weight on the fact that under normal circumstances, the Applicants would have been entitled to the Order they sought as of right, Ground 12 being a compulsory ground for eviction under the 2016 Act.

17. The Tribunal agreed with the submissions of Mr Kemp as summarised above. There had been numerous promises to make good rent arrears and to make rental payments on time in terms of the rental agreement between the parties, all of which had been broken.

18. In the Tribunal's view, the Applicants had demonstrated considerable forbearance and had waited until December 2020 to lodge their application, even although the period of Notice for proceedings had expired on 22 October.

19. The Tribunal also placed weight on the fact that the terms of Health Protection (Protection from Eviction) (Scotland) Regulations 2020 mean that the Order may not be executed until after 31 March 2021 at the earliest. This means that the Respondents have at least six weeks in which to find alternative accommodation.

20. The Applicants were entitled to insist on obtaining an Order for Possession and in the view of the Tribunal it was reasonable for it to be granted, despite possible adverse consequences in terms of the credit rating of either Respondent.

Decision

21. In light of the above findings in fact the Tribunal granted the Order for Possession sought by the Applicants.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland

(Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Maurice O'Carroll
Legal Member/Chair

19 February 2021

Date