



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

Chamber Ref: FTS/HPC/EV/21/2675

Re: Property at 8/1 MUIRHOUSE GROVE, EDINBURGH, EH4 4SS ("the Property")

Parties:

MISS DIANE WATT, 74 CREWE TERRACE, EDINBURGH, EH5 2LJ ("the Applicant")

MISS LOUISE MUIR, 8/1 MUIRHOUSE GROVE, EDINBURGH, EH4 4SS ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 27 April 2022, the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/21/2679.

Prior to the CMD the Tribunal had received two emails from the Applicant dated 21 March 2022.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 1 August 2019.
- ii. The rent initially payable in terms of the PRT was £490 per calendar month which the Applicant subsequently increased by a Rent Increase Notice effective from 1 January 2021 to £550 per calendar month.
- iii. The rent arrears due as at the date of the application are £1,666.00.
- iv. That on 1 November 2020, the Applicant served on the Respondent by personal delivery a Notice to Leave requiring the Respondent remove from the Property by 1 May 2021 on the basis that the Applicant's daughter intended to live in the Property.
- v. That the Applicant has served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD the Applicant made the following representations in respect of this application and the associated application FTS/HPC/CV/21/2679:-

- i. That the current rent arrears outstanding and due by the Respondent are £1666
- ii. That the ongoing monthly rent of £550 is paid by direct payments of Housing Benefit.
- iii. That the rent arrears accrued between December 2020 and April 2021.
- iv. That prior to December 2020 rent was paid by the Respondent in cash. The Applicant did not know whether the Respondent was then in receipt of Housing Benefit which she was passing on to the Applicant.
- v. That when the rental payments stopped the Respondent stated to the Applicant that she was having difficulty paying her heating costs. The Applicant thought that explanation was just an excuse.
- vi. That the Applicant believes the Respondent decided to cease passing on Housing Benefit payments received as she wanted the Applicant to evict her in order to allow the Respondent to apply for local authority housing for which she was not otherwise a priority.
- vii. That the Respondent advised the Applicant that she had that attended at the local authority in an effort to secure larger accommodation and had searched privately too. The Applicant had previously given the Respondent a reference for that purpose in around October 2019. At that time there were no rent arrears.
- viii. That the Respondent has two children, namely a son who is around 14 years of age and a daughter who is around three years of age. The Property comprises only two bedrooms and is therefore no longer suitable for the Respondent.
- ix. That in around April 2021 the Applicant made an application to the mediation service offered by the tenancy deposit scheme into which the Respondent's deposit had been paid in an effort to secure a payment arrangement with the Respondent relative to the rent arrears. The Applicant had been unable to contact the Respondent directly despite various efforts. Between April 2021 and October 2021 the deposit scheme mediation service attempted to contact the Respondent but ultimately issued a Non-Resolution Certificate to the Applicant in October 2021.
- x. That the Applicant believes the Respondent lives in the Property with her two children although she may have a boyfriend who does not live with her.
- xi. That the Respondent is not believed to have been in employment since her daughter was born.
- xii. That the children of the Respondent do not have any special needs. The Respondent previously advised the Applicant that she had epilepsy but no adaptations have been required to the Property.

- xiii. That the Applicant previously told the Respondent that she wanted to recover possession of the Property for her daughter. At that time the Respondent approached the local authority to transfer to Council accommodation. The local authority advised the Respondent that a Notice to Leave was required and the Respondent asked the Applicant to give six months notice rather than the three month notice period otherwise required.
- xiv. That on 1 November 2020 the Applicant delivered to the Respondent personally the Notice to Leave of the same date. Delivery followed text messages exchanged between the parties to ensure the Applicant could place the Notice to Leave into the Respondent's hands.
- xv. That the Applicant's daughter and her 4 year old grandson live in a top floor flat within a 22 floor building near the Property.
- xvi. That the Applicant's daughter signed a tenancy agreement for that flat around the time of the Applicant issuing to the Respondent a Notice to Leave in respect of the Property.
- xvii. That the Applicant's daughter pays rent of £750 per calendar month for the flat which comprises two bedrooms.
- xviii. That the Property is a ground floor flat with a garden to the front and rear. The Property is much more suitable for the Applicant's daughter.
- xix. That if the Applicant is able to recover possession of the Property she will enter into a formal tenancy agreement with her for her daughter to occupy the Property at a monthly rent of £550.
- xx. That the Respondent has lived in the property since 1 October 2009, initially under and assured tenancy which was ended in 2019 when the PRT was signed.
- xxi. That the applicant seeks an order for payment of £1666 and an order for the Respondent's eviction from the Property on the basis that it is reasonable to do so.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 1 August 2019.
- ii. The rent initially payable in terms of the PRT was £490 per calendar month which the Applicant subsequently increased by a Rent Increase Notice effective from 1 January 2021 to £550 per calendar month.
- iii. The rent arrears due as at the CMD are £1,666.00.
- iv. That on 1 November 2020, the Applicant served on the Respondent by personal delivery a Notice to Leave requiring the Respondent remove from the Property by 1 May 2021 on the basis that the Applicant's daughter intended to live in the Property.
- v. That the Applicant has served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. That the Respondent remains in occupation of the Property which is on the ground floor with a front and rear garden but which has only 2 bedrooms.
- vii. That the Respondent lives in the Property with her two children and requires a three bedroomed Property.
- viii. That the Respondent has sought alternative and larger rented accommodation from the local authority and privately.
- ix. That the Applicant's daughter lives with her son in a 2 bedroomed flat on the top floor of a 22 storey building paying a monthly rent of £750 per month.
- x. That it would be more suitable for the Applicant's daughter to live in the Property as her principal home under a formal tenancy at a lesser rent of £550 per calendar month.

- xi. That it reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it is reasonable to grant an eviction order under Ground 5 of Schedule 3 of the 2016 Act on the basis that the Applicant's daughter and her son intend to occupy the let Property under a PRT for at least 3 months.

Decision

The Tribunal granted an eviction order in favour of 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.

G. B

Legal Member/Chair

27 April 2022
Date