



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/22/3476

Re: Property at 53 Lawfield Avenue, West Kilbride, Ayrshire, KA23 9DH ("the Property")

Parties:

Mrs Moira Rugg, 56 Island View, Ardrossan, Ayrshire, KA22 7PL ("the Applicant")

Mr Stephen Templeton, 53 Lawfield Avenue, West Kilbride, Ayrshire, KA23 9DH ("the Respondent")

Tribunal Members:

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

Decision

A Case Management Discussion ("CMD") took place on 23 March 2023 by telephone conference. The Applicant and Respondent were in attendance.

Prior to the CMD the Tribunal had received from the Applicant an email dated 19 March 2023 with attachments.

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

Background

A CMD had previously taken place on 19 January 2023. As at that date the Respondent had paid the ongoing rent in full since 1 October 2022 and had made a payment of £800 on 1 January 2023. At that CMD the Respondent made a commitment to clear the arrears by paying £800 per month on an ongoing basis until the rent arrears are paid in full and the Tribunal considered the Respondent should be given the opportunity to meet that commitment. The Respondent was advised and was aware that if he failed to adhere to the payment plan referred to, the tribunal would consider the Applicant's request for an eviction order. The CMD was therefore adjourned to 23 March 2023.

The CMD

At the CMD the Applicant made the following representations:-

- i. The rent arrears balance is £2,480 which is an increase of £400 on the amount due at the CMD on 19 January 2023.
- ii. The only payment made by the Applicant since the last CMD is £400 on 3 February 2023.
- iii. The Applicant has only £25.18 in her bank account.
- iv. Since the last CMD the Applicant has separated from her husband. The Applicant and her son are staying with her Mum. The Applicant's son is 23 years of age and in full-time employment. The Applicant is in part-time employment working 3 days per week.
- v. The rental income from the tenancy of the Property is required to supplement her income to cover her living costs, debts etc.
- vi. The Property is in the Applicant's sole name. There is no mortgage over the Property.
- vii. The other property leased by the Applicant is in her sole name too, with no mortgage. The rental income on that other property is £460 per month, is paid by direct payments and is up to date.
- viii. In both April and July 2022 the Applicant proposed to the Respondent payment plans to clear the arrears being £600 per month (inclusive of the ongoing rent) and £800 per month (inclusive of the ongoing rent) respectively. These proposals were made by text but were not accepted.
- ix. With regard to the Respondent's representations if the Respondent had received a weekly wage of only £133 he ought to have queried that with his employer and rectified the situation immediately.
- x. On 1 February the Applicant issued a further Notice to Leave to the Respondent on the basis that she will have to sell the Property due to financial hardship due to her changing circumstances. Both her properties will need valued and sold. She will need to find somewhere else to live.
- xi. The Applicant feels she has been "fobbed off" by the Respondent.
- xii. The Applicant seeks an eviction order.

The Respondent made the following representations:-

- i. Since the Respondent commenced his current employment in August 2022 he accrued 9 days holiday. He was told to take these holidays before the end of March or lose them. He was told when to take them over four consecutive weeks. He did not realise that he had to apply for these holidays online. He simply marked his timesheets as "off" on those days. His employer therefore only paid to him statutory sick pay for these days rather than the holiday pay due.
- ii. His employer will make good the shortfall in his wages on Friday this week. He does not know how much the payment will be. The calculation of his holiday pay is based on how long he has worked for his employer.
- iii. During the 4 weeks when he took holidays his wages reduced to £133, £126, £192 and £192 respectively.
- iv. He has now met with his employer and told them he is not happy with the sums paid. He previously spoke to his line manager who showed him how to download the "app" to apply for holidays. There are not a lot of people in his employer's office. Much is done digitally.
- v. The Respondent did not get in touch with the Applicant to discuss or explain the position.
- vi. The Respondent was not able to pay anything towards his rent during that period.
- vii. The Respondent did not know that he could lodge evidence with the Tribunal to substantiate his position.

- viii. The Applicant has asked the Respondent to remove by the end of next month as she is selling the Property. He has applied to housing associations for accommodation.

Findings in Fact

- i. The parties entered into a Private Residential Tenancy ("PRT") relative to the Property that commenced on 1 November 2020.
- ii. The rent agreed to be payable under the PRT was £400 per calendar month payable in advance on the first day of each month.
- iii. No deposit was taken from the Respondent.
- iv. On 21 August 2022, the Applicant served on the Respondent by hand and by recorded delivery a Notice to Leave requiring the Respondent remove from the Property by 19 September 2022 on the basis that the Respondent had failed to pay rent of £2,400.
- v. The Applicant served on North Ayrshire Council by recorded delivery post a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. As at 19 January 2023 the rent arrears were £2,080.
- vii. As at 23 March 2023 the rent arrears have increased to £2,480.
- viii. The rent arrears equate to in excess of 6 months rent.
- ix. The Applicant has not complied with the pre-action protocol prescribed by the Scottish Ministers.
- x. The Respondent has not engaged with the Applicant.
- xi. The Respondent has not maintained the commitment he made on 19 January 2023 to pay the rent and arrears at a total of £800 per month with effect from February 2023. He made a payment of only £400 on 3 February and has made no payments since.
- xii. The Applicant and her husband are separated.
- xiii. The Respondent is looking for alternative accommodation.

Reasons for Decision

The factual background is not in dispute between the parties. The arrears are admitted. The Respondent admits that he has defaulted in a payment commitment made.

The only issue for determination is whether it is reasonable to grant an eviction order. The tribunal determined that it is reasonable to do so in the particular circumstances.

It is not the role of the tribunal to monitor payment arrangements. The Respondent was given an opportunity to show his good faith in making payments at the rate of £800 per month which he had indicated he would do and (unusually) the CMD that took place on 19 January 2023 was adjourned for that purpose.

The Respondent sought to explain his failure to make payments. No supporting evidence was produced. He made no payments of any sort from 3 February. He did not engage with the Applicant to explain the default. The arrears exceed 6 months in value. They are increasing once again.

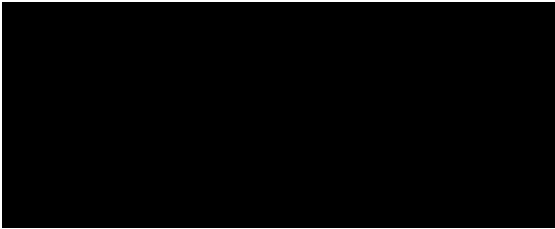
Whilst the Applicant had not complied with the non-mandatory pre-action protocol prescribed by the Scottish Ministers, nevertheless the Respondent's financial circumstances and his expressed confidence that he could meet the commitment to pay £800 per month – being a payment proposal which he personally advanced at the CMD on 19 January 2023 – from his wages allowed the tribunal to excuse compliance in this particular case.

Decision

The tribunal grants an eviction order.

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

23 March 2023

Date