



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/23/1167

Re: Property at Braeside Cottage, Garliston Road, Coatbridge, ML5 2FG (“the Property”)

Parties:

Mrs Lyudmyla Smith, Oakland Manor, Coltswood Road, Coatbridge, ML5 2AB (“the Applicant”)

Mr Stuart Kerr, Miss Ashley Blair, Braeside Cottage, Garliston Road, Coatbridge, ML5 2FG (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and John Blackwood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Eviction.

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by video conference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant’s representative Brian Smith attended with the Applicant.

The Respondents were not present. They had been served by Sheriff Officer on the 7th September 2023.

3. Preliminary Matters

The Respondents were not present and no written representations had been received. The Applicant's representative said that the Respondents remained in the property and he had been told by gardener today that they were in the property this morning.

The Applicant's Representative referred to an email he lodged in September and which was sent by post to the Respondents by the Tribunal seeking to amend his application to include Ground 12A, substantial rent arrears. He had lodged with same a rent statement dated 15th September 2023 for rent arrears of £7588.01. He explained no payment to rent had been made by the Respondents since May 2023. The Tribunal considered the application for amendment with the Applicant's representation, previously lodged and intimated as a preliminary matter at the start of the Case Management Discussion. The Tribunal determined the Application could be amended and granted the application.

No further preliminary issues were raised.

4. Case Management Discussion

The Applicant's representative submitted that the main grounds they were seeking to rely in terms of Ground 11, Breach of the Tenancy was the condition of the house. He submitted that the condition of the property was brought to their attention by the gardener who maintains the grass of the property. They then visited last year and found the property in a poor condition. It took 2 months for an arranged inspection. The Applicant's representative said that the condition of the property was unbelievable, the previously new kitchen cupboard doors had been removed, there were animals running out from under the bed and the property was in squalor. The Applicant gave the Respondents 2 months to bring the property back to a reasonable condition but then all communication between parties stopped.

The Applicant's representative said that the conditions for the animals were reported to RSPCA. He was made aware by the police that 16 dogs were removed from the property. He believes that there has been further dogs and other animals removed from the property. The Applicant considers that the Respondent have been breeding animals inside the property. The Applicant has applied separately for right of entry and considers the Respondents are still blocking entry. The Applicants position is that even though dogs have been removed they are still breeding dogs and using the inside of the property as

kennels. The RSPA will not provide he said more information as the case is still a live investigation.

The Applicant's representative set out that they continue to breach the tenancy agreement by the condition of the property inside and outside. Reference was made to the photographs lodged. He said there are now 3 broken windows and that wheelie bins have blocked entrances and there has been padlocks at the gates.

The Applicant's position is that there are now substantial rent arrears as at 15th September 2023 of £7588.01. The property at the start of the tenancy was a beautiful bungalow, with a new kitchen and sitting in an acre of ground. It is now in a poor state of repair with erected fences and gates for dogs, broken windows and the Applicant has been unable to maintain and repair without access.

5. Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondents had been served by Sheriff Officer but did appear or lodge written representations. The application contained significant evidence including photographs and written evidence.
2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
3. The Tribunal was satisfied that the tenancy was a Private Residential Tenancy by virtue that same commenced on 25th May 2018 and that the terms of the Private Housing (Tenancies) (Scotland) Act 2016 apply.
4. A valid Notice to Leave had been served on the Respondents dated 27th February 2023.
5. The Applicant relies on Grounds 11, 12 and as amended 12A under Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (as amended by the Cost of Living (Tenant Protection) (Scotland) Act 2022), of the 2016 Act.
6. The Applicant relied on in terms of Ground 12 and 12A the rent statements lodged. The Respondent's last payments to rent were in May 2023. Contractual monthly rent for the property is £954.15. The rent arrears as at the rent statement lodged dated 15th September 2023 are £7588.01. The Tribunal considered that Grounds 12 and 12A was established.
7. The Applicant also relied on Ground 11 and a breach of the tenancy. The Tribunal considered that the Respondents on the evidence submitted had breached the terms of the tenancy, namely to "*maintain the property to a clean, tidy and satisfactory manner*" and had breached the term that "*the Respondents were permitted 2 dogs within the property only*"
8. Notice to the Local Authority had been given.

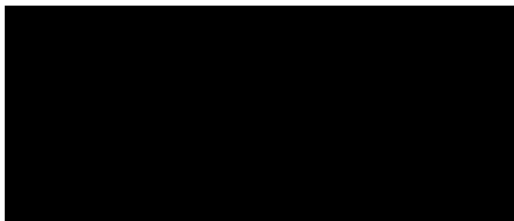
9. The Tribunal was aware the Respondents were in their 40's with no known vulnerabilities or dependents.
10. The Tribunal was satisfied it was reasonable to grant the Order in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 on balance.
11. Accordingly in terms of Section 51 of the 2016 Act the Tribunal granted an Order against the Respondent for Eviction.

Reasons for the Decision

The Tribunal heard evidence from the Applicant's representative and noted the considerable evidence lodged. The Respondents had not been in appearance or lodged written representations. They had been served by Sheriff Officer. The Tribunal considered the evidence was consistent with the submissions made of the Applicant's representative. His evidence was consistent and detailed and he was credible. On the basis of the information before the Tribunal on balance the Tribunal determined it was appropriate and reasonable to grant an Order for Eviction.

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

11th October 2023

Date