



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/22/3520

Re: Property at The Bungalow, Addinston, Lauder, Berwickshire, TD2 6QZ (“the Property”)

Parties:

Mrs Kirsteen McKerrow, Addinston, Lauder, Berwickshire, TD2 6QZ (“the Applicant”)

Mr Evan Dewar, residing at The Bungalow, Addinston, Lauder, Berwickshire, TD2 6QZ; and Mr Aiden Dewar whose whereabouts are UNKNOWN (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents were in rent arrears for more than three consecutive months and therefore there were grounds for eviction under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act”) and that taking in to account the overall circumstances surrounding the Respondent’s tenancy of the Property that it was reasonable to do so. Accordingly, the Tribunal granted an Order for Eviction against the Respondent.

Background

The Applicant was the owner of the Property and had granted a private residential tenancy to the Respondents, who were brothers. The Property was located on the Applicant’s farm, where she herself resided. The tenancy was granted to the Respondent on 3 April 2019 at a monthly rental of £650. The Applicant alleged that there had been a long history of arrears stemming back to almost the beginning of the tenancy. Repeated promises had been made to address the rent arrears, the Applicant alleged, but the arrears persisted. The Applicant therefore sought an Order for Eviction and had applied to the Tribunal for this.

Case Management Discussion

A Case Management Discussion (“CMD”) took place by teleconference on 30 May 2023 at 10am before the Tribunal Members. The Applicant was not present but was represented by Ms Kirstie Donnelly of T C Young, Solicitors, Glasgow. The Respondent was neither present nor represented. The Tribunal was satisfied that the details of the CMD had been served on Evan Dewar by Sheriff Officer and by advertisement on the Tribunal website in respect of Aiden Dewar. The Tribunal was satisfied that it was appropriate for it to make a decision.

The Tribunal had before it the following documentation:-

- A Land Certificate evidencing the Applicant’s ownership of the Property
- Application form to the Tribunal seeking an eviction order
- A copy of the lease between the parties
- A copy of the Notice to Leave served on the Respondent
- S11 homelessness form and intimation to the relevant local authority
- A rent arrears statement
- Copy correspondence between the parties
- Pre-action protocol correspondence issued by the Applicant to the Respondent

Findings in Fact and Law

The Tribunal found the following:-

- The Applicant was the owner of the Property
- The Applicant had granted a private residential tenancy to the Respondent commencing 3 April 2019
- The monthly rental was £650 per month
- That at the date of the CMD there were arrears of £2283.15p
- That there had been arrears of rental continuously since 3 October 2020 (and periodically prior to that)

- That the facts evidenced that the Respondent was in breach of Ground 12 of Schedule 3 of the Act and that it was reasonable for the tribunal to grant an order for eviction

Reasons for Decision

The tribunal based its decision on the papers before it and the evidence led by Ms Donnelly for the Applicant at the hearing.

The Tribunal noted the terms of the rent arrears statement submitted by the Applicant. This showed that the tenancy commenced on 3 April 2019 and within a few months there were periodic arrears of rental. From 3 October 2020 until the CDM there had been rent arrears for 32 consecutive months.

The CMD had originally been scheduled for early 2023 but had been postponed to see if the Respondent could get financial assistance from a local authority scheme.

The Applicant had raised this as a way of addressing the rent arrears and it was apparent to the Tribunal that eviction was a last resort for her. The Respondent had obtained grants from the local authority and payments of £500 had been made on 11 January, 3 February and 5 May 2023. Ms Donnelly indicated that there was likely to be one further payment of £500 under the scheme but that was the maximum payable.

Ms Donnelly advised the Tribunal that payments of housing benefit were being made at around £360 per month and these had been received as well. The Respondent had, however, contributed nothing for many months other than one payment of £650 not long before the date of the CMD.

The Tribunal noted from the papers that there had been promises made by the Respondent to reduce the arrears by selling cars and by him obtaining employment. This did not appear to have happened.

The Tribunal considered matters. It was apparent that at 32 months the test set out in Ground 12 of Schedule 3 of the Act had more than been met (3 months rent arrears). The Tribunal considered whether, in the circumstances, it was reasonable to grant the order. The Tribunal was satisfied that it was. There was a significant history of rent arrears that had never been properly addressed by the Respondent. The arrears had not been eroded recently and stood at roughly the same amount as existed in September 2022. The grant monies that had been paid by the local authority had helped maintain the arrears at the current level but with that funding being complete and the housing benefit meeting only just over half of the rental, it seemed inevitable that the arrears would start increasing. There had been no engagement from the Respondent with the CMD and so there was no evidence from the Respondent to set out why it wasn't reasonable to grant the order. The Applicant was an older lady who relied on the income from the Property and she was beginning to suffer financially as a result of the continued arrears.

Accordingly the Tribunal resolved that it was reasonable in the circumstances to grant the Order for Eviction as sought by 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.


Ewan Miller
Legal Member/Chair

12 June 2023
Date