



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/19/4052

Re: Property at 26a Gillies Street, Troon, KA10 6QL (“the Property”)

Parties:

Mrs Eleanor Wilson, c/o Neill Clerk and Murray, 3 Ardgowan Square, Greenock, PA16 8NW (“the Applicant”)

Mr Alan Mackie, 26a Gillies Street, Troon, KA10 6QL (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Ahsan Khan (Ordinary Member)

1. Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent for £6284.07

2. Attendance and Representation

This was a hearing to consider the application dated 17th December 2019 brought in terms of Rule 70 (civil proceedings in relation to assured tenancies) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The hearing took place by teleconference as a result of the restrictions required by the COVID-19 pandemic.

The Applicant was represented by Pauline Ward, solicitor, Neill Clerk and Murray, 3 Ardgowan Square, Greenock, PA16 8NW

The Applicant’s son and Power of Attorney, Mr David Wilson was present.

The Applicant, Eleanor Wilson gave evidence by telephone during the Hearing.

The Respondent was not present.

3. Background

17th March 2020 – Case postponed on the written request of the Respondent.

22nd July 2020 - This case had previously called on 22nd July 2020 and had been adjourned for further information to be provided by the Applicant.

7th September 2020 - It then called on 7th September 2020. Neither the Applicant nor their representative attended. The Respondent was in attendance. In the interests of justice and having regard to the overriding objective the Tribunal adjourned the Hearing to allow the attendance of the Applicant and to progress the matters identified on 22nd July 2020.

16th October 2020 – The case then called on the 16th October 2020. Ms Ward for the Applicant confirmed that she had not received the notification for the Hearing on the 7th September 2020 and this was why there had been no attendance. She had lodged the information previously sought by the Tribunal. She explained she had now done so by lodging written submissions referring to the issues raised by the Respondent and the Tribunal confirmed receipt. She also explained that they were intended to provide notice to the Respondent of the Applicant's position.

The Respondent had contacted the Tribunal administration on 15th October 2020 to say that he would not be in attendance at the hearing on 16th October 2020 and that he would provide information by letter only as he would not be able to email the letter he referred to.

The Tribunal issued a direction on 16th October 2020 to the Respondent to provide information regarding receipts and payments in response to the rent statement lodged which would assist the Tribunal in determining the issues in dispute between the parties at any hearing. The Tribunal adjourned the case to a new Case Management Discussion given the Respondent had been unable to attend but indicated in the Note issued to all parties that the application would need to proceed to a full Hearing.

Case Management Discussion on 1st December 2020

The Tribunal indicated to the Hearing that the Respondent had sent a letter dated 18th November 2020 to the Tribunal. The Applicant's representative advised she had received this letter. It was noted the letter indicated to the Tribunal that the Respondent would not take part in any further hearings and had made a complaint to the administration about the Tribunal. The Tribunal advised that the administration was dealing with the complaint separately.

The Tribunal indicated as before that these Applications will need to proceed to a Hearing.

It was noted the Respondent indicated he would be writing further in regards his non attendance at the hearing on the 16th October 2020 but that the only letter received was the letter detailed 18th November 2020 referred to.

In any event the Tribunal noted the Respondent had not complied with the directions issued on 16th October and there being no objection determined that the Respondent be allowed further time to provide the information sought. Accordingly the Tribunal indicated the directions of 16th October 2020 would be reissued to the Respondent.

Given the opposition to the applications and the issues between the parties the Tribunal fixed a full Hearing to take place by teleconference on 5th January 2021 at 10am.

4. Preliminary Issues

Respondent – Non attendance

The Tribunal confirmed the Respondent had written further to the Tribunal by letter of 30th November 2020 and received by the Tribunal on 3rd December. The Respondent indicated he would take no further part in proceedings and referred to his complaint. The Tribunal confirmed to those present that the Respondent had been written to by the Tribunal Administration to confirm that as the complaint was not administrative any complaints regarding the Tribunal or decisions could be directed to the Judicial Office of Scotland. The Tribunal administration also indicated and reiterated that a full hearing had been fixed to take place on 5th January 2021. The letter also narrated that the Respondent was suffering from ill health.

The Tribunal considered the correspondence. The Tribunal was advised that the Applicant's position was that this Application and the Application under reference 4052 had been ongoing since December 2019 and the Respondent in the submission of the Applicant's solicitor was attempting to thwart the process. She referred further to the opportunities given to allow the Respondent to engage and the overriding objective that cases be dealt with speedily and in the interests of both parties.

In accordance with Rule 29 of the Tribunal Rules, the Tribunal decided to proceed in the absence of the respondent being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with.

Amendment

The Applicant's solicitor referred to her letter of 22nd December 2020 by email which she had served on the Respondent and which the Tribunal had also done. She sought that the arrears in respect to both applications be amended to £6284.07. She referred to the rent statement attached.

The Tribunal after hearing submissions allowed the amendment to both applications.

Eleanor Wilson/Hearing

It was noted Eleanor Wilson was to give evidence to the teleconference but she was vulnerable and 81 years of age. Adjustments in regards to her evidence were made.

Applications

It was agreed that the same evidence would be heard in both applications and that for that purpose the evidence would be conjoined and the findings in fact would also be conjoined.

5. Summary of Evidence

For the Applicant

Dave Wilson

- a) Evidence was heard from Dave Wilson, 38yrs, who was acting as the Applicant's Attorney in terms of a registered 29th May 2007 Power of Attorney signed on 23rd April 2007 providing the power to Mr Wilson to administer and manage heritable property for the Applicant.
- b) Mr Wilson said that the Applicant owns the property and she herself had dealt with Mr Mackie throughout the tenancy until March 2019. Mr Wilson said he took over dealing with the property.

Arrears

- c) Mr Wilson said throughout the Tenancy there were points at which the tenant would pay, then he would build arrears and then clear them. Mr Wilson referred to the rent statements lodged. Mr Wilson said that all of a sudden all rent stopped and there was no communication from the Respondent.
- d) Mr Wilson said on taking over the management of the property he converted the handwritten spread sheet of Mrs Wilson, his mother and then put it into a digital spreadsheet. He said his mother had a hand written spreadsheet where she marked the date and all the payments received by Mr Mackie and the ongoing arrears total. He referred in detail to the spreadsheets lodged. Mr Wilson said that his mother clearly marked when she received a payment and she did this for all her other tenants. Mr Wilson said the Applicant had kept the records the same way for all her properties which he is now managing. Mr Wilson said the arrears had now increased to 6284.07. He said there was no possibility any other payments could have been received as they were accurate.

Rental agreement

- e) Mr Wilson told the Tribunal that the rental amount would have been £320 per 4 weeks at the set-up of the tenancy on 21st October 2000 as that is based on other flats that she had at that point. He said he did not set it up but could see from his mother's records that all the tenants at that time paid a rent of £320 for one bedroom flats. Mr Wilson said the tenant prior to Mr Mackie also paid £320 per 4 weeks. Mr Wilson said from the records there was then a rental increase in 2008 around September time and the rent went to £340. Mr Wilson was certain that the rent never changed after that and continues to be £340 per 4 weeks. Mr Wilson was questioned about the Respondent's position that the rent is £360 per 4 weeks and referred to a payment of £360 made on 18 November 2019 and a double payment of £720 made by the Respondent in December 2019. However Mr Wilson confirmed that the Respondent's rent was £340 from September 2008 and has not changed. Mr Wilson said there was no note as to how long the tenancy was to last in his mother's folder and records.

Repairs

- f) Mr Wilson was asked about the respondent's position that he would sometimes pay for repairs and that these should be offset against the rent. Mr Wilson said that neither he nor his mother would ever have asked tenants to make payment for tradesman. They would always deal directly with repairs and the invoice. Mr Wilson was asked when the last repair on the property was completed. He said that this was not recorded on the file but it would have been a long time ago, and only the gas safety checks were completed. When questioned as to whether he felt this was unusual for an older property Mr Wilson said he did not. Mr Wilson said the Applicant had hardly had any repairs as he does not like people in his house. Mr Wilson said that the Applicant would pay his rent sometimes online and other times in cash. It was a mixture of payments and depended on the circumstances.

Benefits

- g) Mr Wilson said he had contacted both the Universal Credit and Housing Benefit teams on 17th November 2019 to see what else was required to process any outstanding claims following the Respondent's written submissions. Mr Wilson explained he was told the Applicant had made no application and has never made one and that housing benefit said that no new application for benefit has been made and the last note on their file was 2014. Mr Wilson said he thought this was strange as the Respondent claimed that matters could be resolved and he could get payments backdated.

Mrs Eleanor Wilson - Applicant

- a) Eleanor Wilson explained she was the owner of the property, was 81yrs of age and was retired. She informed the Tribunal she suffered from ill health and could only inform the Tribunal about matters before becoming ill in 2019 as her son has dealt with the property since then. She said that at the start of the tenancy she could not recall if she advertised or not. She may have placed an advert in the Evening Times. Mrs Wilson said she did not know of the Respondent before he was interested in renting a property. She said the Respondent had come to see another of her flats which he did not want. She also had this property empty and the Respondent took it instead. She told the Tribunal that she did not have much of a system at the beginning as she had not been doing it all that long. Mrs Wilson said that her tenants could stay for as long as they wanted provided they paid the rent. Mrs Wilson said when the Applicant made a rent payment she recorded it in her folder for the property.

Payments

- b) Mrs Wilson said the Applicant initially paid a lot of his rent in cash or when he had housing benefit this was paid directly to her. Mrs Wilson said the rent for the property was £320 at the beginning as that was what she charged for a one bedroom flat and that's what she charged other tenants. Mrs Wilson said the agreement she had was that the Applicant could stay in the property as long as he paid and this could be as long as he wanted. She said there was no other agreement. She said further it was the same as any other tenant that she had, that they could stay as long as they wanted.

Mrs Wilson told the Tribunal that for many years she would be in Troon every Saturday and so she would pop in to the Applicant to collect the rent. She said she did that for some of her other tenants and they all knew they could pay their rent that way.

Repairs

- c) Mrs Wilson said she dealt with repairs to properties herself and she never left a property needing a job done. She had established relationships with a number of trades to carry out this work. Their invoices were sent to her for payment. Tenants were never required to instruct and pay for repairs.

6. Submissions For the Applicant

The Applicant's solicitor submitted that Mr Wilson and Mrs Wilson had established in evidence the requirements of a lease with the agreement as to the rent of £320 per 4 weeks initially and then £340 from September 2008. She submitted further

that Mr Wilson gave clear evidence on the current arrears of £6824.84 and the Applicant sought a payment order for same.

In addition to the payment order as the Applications were heard together the Applicant's solicitor asked for an order for eviction based on the significant arrears and that there has been no rental payments since Dec 2019. The Applicant's solicitor submitted that in the circumstances it was reasonable that an order for possession was granted. She further submitted that the Respondent had repeatedly said he would make payments, had not paid and had not made any application for Housing Benefit as he said he had.

The Applicant's position was that the lease was a properly constituted tenancy though not in writing for a period of less than one year and then that the case law established where they isn't a period stated the default would be one year and then would renew from the start date every year by tacit relocation.

The Applicant's solicitor suggested the Respondent may have ill health although no medical evidence had been lodged but he still had an obligation to pay rent. She submitted the Respondent had indicated he was on pension credit and there should be a backdated payment but this was false and that she submitted he was capable of dealing with correspondence and had attended the Tribunal by teleconference previously. She submitted given the length of time since rental payments had been made, the length of time the application had been ongoing and in the circumstances of the case an order for possession ought to be granted.

For the Respondent (In absence)

Whilst the Respondent was not present the Tribunal and the Applicant had received written representations from him and these were carefully considered in his absence. The Respondent's position as set out was that the receipts he has do not match up to the dates given in terms of payments made that the Applicant has submitted. The Respondent's written representations also stated that the Applicant would take rent payments when visiting Troon on a Saturday and that the dates did not match. He also stated that he was to be given the property in the Applicant's will and that this was agreed and further that he assisted the Applicant in the management of her other properties in Troon. The Respondent further states that he instructed repairs and paid tradesman and was told to deduct same from the rent due. The Respondent's position was that the Application were unfounded in fact and law and referred to not having a written lease.

The Tribunal noted that respondent did comply with the Notice of Direction dated 16th October 2020 which required him to provide further information and receipts in support of these representations.

7. Findings in Fact

1. This Application is dated 17th December 2019 and brought in terms of Rule 65 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The Applicant and the Respondent entered into a lease for the property on 21st October 2000.
3. The Respondent took occupancy of the property on 21st October 2000 in return for payment of rent to the Applicant. This rent was £320 payable 4 weekly to the Applicant.
4. This Tenancy is an statutory Assured tenancy in terms of Section 12 of the Housing (Scotland) Act 1988.
5. The Respondent has resided in this dwelling as his home since 21st October 2000 to the present date.
6. The Property is a one bedroom flat owned by the Applicant.
7. The Applicant has a number of flats in Troon and all one bedroom flats in Troon were rented at that time for £320 per 4 weeks.
8. The rent between the parties for the property was £320 per 4 weeks and was paid by the Respondent to the Applicant in the most part directly by cash to the Applicant personally.
9. There were periods when the Respondent was in receipt of Housing Benefit and this was paid directly to the Applicant.
10. In September 2008 the rent was increased to £340.
11. The Respondent has been in arrears of rent for periods throughout the tenancy and before this period had cleared the rent arrears.
12. The Applicant had previously granted a financial Power of Attorney to her son, David Wilson who commenced managing the property when the Applicant was in hospital.
13. The Applicant is 81 years of age and her son under the Power of Attorney continues to manage her heritable properties, including this property.
14. In or around April 2019 the Respondent stopped making any regular payments to the rent.
15. In December 2019 the Respondent made his last payment of rent for the property.
16. As at 22nd December 2020 the rent due by the Respondent to the Applicant was £6284.07.
17. The Applicant's Attorney contacted the Department for Works and Pension in November/December 2020 and was told there was no Housing Benefit Applications for the Respondent and the last note on their file for the property was in 2014.
18. On 5th November 2019 the Respondent wrote to the Applicant's solicitor indicating he had made an application for Housing Benefit.
19. The Respondent was sent a letter dated 8th October 2020 to assist in any Housing Benefit application.

20. The Respondent on the evidence before the Tribunal had not recently made an application for housing benefit and there was no outstanding applications/
21. No receipts or list of payments made by the Respondent was lodged by the Respondent in terms of the Directions issued by the Tribunal to the Respondent on 16th October 2020. The Tribunal reissued these directions on 1st December 2020.
22. Form AT6 and Notice to Quit was served upon the Respondent by Sheriff Officer on 25th September 2019.
23. The AT6 specifies the Grounds of Repossession namely Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act.
24. As at the date of the of this Hearing and service of the AT6 the Respondent was in arrears of rent to the Applicant of more than 3 months.
25. The Respondent has persistently delayed to pay rent throughout the tenancy.
26. Form 11 was served on the Local Authority on 17th December 2019.

8. Reasons for Decision

The Tribunal determined that the essential requirements of a lease in the absence of a written agreement lodged were provided in the oral evidence given in detail at the hearing. Namely the basic elements of, the parties, the subjects and the rent were established overwhelmingly in the evidence before the Tribunal. The Tribunal having regard to *Gray v Edinburgh University, 1962 S.C 157* and *The Law of Landlord and Tenant in Scotland, 1967, p7* noted that where rent is established then in the absence of a duration specified then the Tribunal can infer that the lease duration was for a period of 1 year. However the Tribunal determined this was not necessary for possession reasons as the Applicant sought to recover possession of the property based on rent arrears. Although no written lease was produced the Tribunal noted that from the evidence it was likely on balance one did exist in written form it was nevertheless not produced by either party. The Tribunal noted that leases of a years duration which can be implied here in terms of the law do not require to be constituted in writing and reference is made to Section 1 of the Requirements of Writing (Scotland) Act 1995 and *paragraph 3-11, page 86 of Residential Tenancies by Peter Robson and Malcom Combe, 4th Edition*

The Tribunal determined the essential elements of a lease was present and noted the terms of *paragraph 3-07, page 86 of Residential Tenancies by Peter Robson and Malcom Combe, 4th Edition*. The Tribunal noted the evidence of the Applicant and her son was credible and reliable. The evidence of both was consistent and was also consistent in terms of the documents lodged and relied upon by the Applicant. The Tribunal accepted the evidence of the Applicant and her son that the rent for the property was £320 per 4 weeks and then was increased in September 2008. The Applicant had lodged an accurate spreadsheet comprising the rent statement for the property from 2018 to December 2020. In terms of Section 12 of the Housing

(Scotland) Act 1988 the lease in a statutory Assured Tenancy and is not exempt in terms of Section 12(1)(c) of the 1988 Act and complies with the following

12 Assured tenancies.

(1) A tenancy under which a house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as—

(a) the tenant or, as the case may be, at least one of the joint tenants is an individual; and

(b) the tenant or, as the case may be, at least one of the joint tenants occupies the house as his only or principal home; and

(c) the tenancy is not one which, by virtue of subsection (2), cannot be an assured tenancy.

The Applicant had lodged a detailed Written Note of Submissions stating that there had been previous legal action between the parties due to rent arrears.. A written lease had been provided to the Respondent either before or after his period of imprisonment but that a copy could not be found. The Respondent had attended the teleconference hearing on 22nd July 2020 and had disputed the rent statements lodged and payments made and also the legal position of the lease. In response the Applicant thereafter lodged a Written Note of Submissions to assist the Respondent. The Respondent did not and has not answered same.

The Respondent has since sent letters to the Tribunal Administration confirming he will not be engaging in the process further and seeking to complain. This has been dealt with separately and has no relevance to the merits of the Applications before the Tribunal. The Tribunal was satisfied that a decision could be made in the Respondent's absence at the Hearing as the Respondent had a number of opportunities to engage with the Tribunal and it would have been contrary to the interests of parties having regard to the Overriding objective not to proceed with a Hearing. The Respondent's complaint with the Tribunal had been dealt with separately by the Tribunal Administration and was not relevant to the Tribunal's consideration of the evidence.

The Respondent has written to the Applicant's solicitor and informed the Tribunal about pending benefit applications but there is no evidence that same exists. The Respondent has stated he has made payments to the rent which he has receipts for but there is no evidence that these exist. The Respondent has had opportunities to engage in the process and to submit the receipts as the Applications have been ongoing for over a year. The Respondent has not engaged with the process.

The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property. The Tribunal was satisfied that there was a Lease between parties. The

Tribunal was satisfied that the Respondent was in arrears of rent lawfully due and a Rent Statement for the property from 2008 to December 2020 was lodged. Rent owed from same amounted to £6284.07. Accordingly in terms of Section 16 of the 1988 Act the Tribunal granted an Order for payment for the sum of £6284.07 against the Respondent.

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.

K Kirk

Legal Member/Chair

5 January 2021

Date
