



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/22/1436

Re: Property at 16 Bridgend Cottages, Inverkip, PA16 0AN (“the Property”)

Parties:

Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust, Ardgowan Estate, Ardgowan House, Inverkip, PA16 0DW (“the Applicant”)

Mr Simon Pugh, 16 Bridgend Cottages, Inverkip, PA16 0AN (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an application received in the period between 16th May and 21st June 2022 and made in terms of Rule 109 of the Procedural Rules. The Applicant is seeking an eviction order under ground 12. The Applicant lodged a copy of the tenancy agreement in respect of the Property which commenced on 15th November 2019, copy tenant ledger showing outstanding rent in the sum of £6,435, Notice to Leave dated 15th April 2022 with evidence of service, copy section 11 notice with evidence of service, and pre-action requirement letters dated 16th March and 5th April 2022.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 28th October 2022. The Applicant was represented by Mr Nicholas Wright and Ms Caroline McMillan. The Respondent was in attendance.
3. The Respondent said he was opposed to the order being granted. He said he accepted the sum put forward in terms of the rent arrears, but he had withheld rent due to the state of the Property, which included mould, wet rot, and draughty windows. The Respondent said he had kept the rental money and would be willing to pay it if the repairs were attended to. The Respondent said

he had often notified the Applicant of the repairing issues, usually by WhatsApp messages, which he would be able to provide. He had also informed them by telephone. He had first reported problems two weeks after moving in.

4. The Tribunal decided an evidential hearing was required to ascertain whether the ground is met and whether it is reasonable to grant the order. The Respondent was encouraged to take legal or suitable housing advice on (a) his defence to the application, including issues around withholding rent/rent lawfully due; (b) repairing standard issues; and (c) housing options. The Respondent was asked to lodge a written note of his defence within 4 weeks of the date of issue of the CMD note. He was asked to provide reasons why, if the grounds were met, it would not be reasonable to evict him.
5. The Tribunal indicated it would expect to see evidence from both parties in relation to the timeline in respect of reporting of repair issues and actions, Evidence in relation to the current condition of the Property could include photographs. The Tribunal said it would expect to see evidence in support of the claim that the Respondent is genuinely exercising the remedy of retention, such as a bank statement and messages to his landlord indicating his intention to do so.
6. Parties were notified by letter dated 13th December 2022 of a hearing set down for 8th February 2023.
7. By email dated 24th January 2023, the Applicant lodged an Inventory of Productions, including a rent statement showing a sum outstanding of £9373.45.

The Hearing

8. A hearing took place by telephone conference on 8th February 2023. The Applicant was represented by Mr Nicholas Wright and Ms Caroline McMillan. The Respondent was not in attendance.
9. The Tribunal considered the terms of Rule 29 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and considered that the Respondent had been notified of the hearing. The Tribunal decided to proceed with the application upon the representations of the parties present and all the material before it.
10. The Applicant’s representatives said the Respondent has not paid rent for two years. He has made no attempt to confirm that he is withholding rent, and they do not believe that there is a case for withholding rent. Small remedial works required to be done to the Property and these have been carried out. Roof works were carried out initially by the Respondent, and the cost was offset against his rent. Further works were later carried out by another roofing contractor, who stripped and re-slatted the roof. There were no serious problems

that would justify withholding rent. The Respondent had, on occasion, carried out works himself without prior permission, and had requested payment thereafter. The Applicant was not prepared to pay for unauthorised works. Although the Respondent had referred to instructing an independent surveyor and a solicitor, no legal correspondence or independent report had been received.

11. The Applicant's representatives said the Respondent was using an industrial-style gas blow heater in the Property, with the windows closed. They believed this was causing condensation issues. Furthermore, the Respondent is a smoker and he has covered the smoke detectors in clingfilm, which is of great concern to the Applicant. Responding to questions from the Tribunal, the Applicant's representatives said they believed the system for detecting fires complies with the relevant legislation for rented properties.
12. Recent works have been carried out to finish off the facings on the secondary glazing that was previously installed. The Applicant's contractor was satisfied that the hallway wall was dry and that any marking on the wall was historic.
13. Responding to questions from the Tribunal, the Applicant's representatives said, as far as they are aware, the Respondent is in full-time employment. They have never been informed that there were any issues in relation to the payment of relevant benefits, and he lives alone in the Property.
14. The Applicant's representatives submitted that it was reasonable to make the order, given the level of arrears, and the failure of the Respondent to properly evidence that he was withholding rent.
15. Responding to questions from the Tribunal as to whether the Applicant would expect to let the Property in its current condition if the order was granted, the representatives said the Property only requires redecoration and re-carpeting. They would expect to be able to let it for a monthly rent of around £400. Asked whether they had ever sat down with the Respondent to discuss the situation, they said they had discussed it in the past, but not for a long time. There had also been some difficult telephone conversations between the parties and recent communications had only been by email.

Findings in Fact and Law

16.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 15th November 2019.
 - (ii) At the date of serving the Notice to Leave on 15th April 2022, the Respondent was in arrears of rent for three or more consecutive months.

- (iii) The Respondent has been in arrears of rent for three or more consecutive months.
- (iv) At the date of first considering the application, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
- (v) At the date of first considering the application, the Respondent had been in arrears of rent for a continuous period, up to and including that day, of three or more consecutive months
- (vi) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (vii) The pre-action requirements for private residential tenancies have been met.
- (viii) It is reasonable to grant an eviction order.

Reasons for Decision

17. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months; and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
18. The Tribunal took into account the written representations lodged by the Applicant, which showed a timeline of correspondence between the parties, as follows:
19. In 2020 the Respondent carried out pre-authorized works to the roof and was paid by offsetting against rent outstanding.
20. No rent was paid in July, August or September 2020, with no reference in advance by the Respondent to withholding rent due to repair issues.
21. On 21st September 2020 (page 6/67), the Respondent mentioned some repairing issues, but did not state he was withholding rent.
22. Having been chased up by the Applicant, the Respondent replied on 3rd November 2020 (7/67) and apologised for not paying rent, stating that he had

the cash at home, but was working long hours, and that he would be in the following day if the Applicant wished to come for the money. The Respondent did not pay the rent, and arrears accrued.

23. On 25th March 2021, in response to being chased up again by the Applicant, the Respondent said he would pay £1000 at the end of March and £1000 the following month if something was done [presumably about the roof and windows], but would be contacting a solicitor. The Respondent paid £1000 on 6th April 2021.
24. On 1st December 2021, the Respondent was advised that the roofing work was complete and provided with a copy of his rent balance of £4,245.
25. On 16th December 2021 (page 9/64), on being contacted by the Applicant, the Respondent stated that he would clear the arrears of £4,245 by the end of January.
26. Following attempts by the Applicant to contact the Respondent, he replied by email on 2nd February 2022 (9/67), stating that he would have the money within the next week. The Tribunal noted that this suggested the money was not readily available for payment. The Respondent said he would be happy to pay all of the back rent, and one year's rent in advance, but having gone through another winter where the heating was disappearing through the windows, he would like a concrete date for replacement or refurbishment of the windows.
27. A quote was obtained for work to the windows, and on 5th April 2022 (10/67), the Respondent stated that he had no problem paying the rent arrears and that he had the money. He stated that he expected insulation to be fitted as well as the windows and requested a copy of the quote for the windows. His request was refused.
28. On 6th April 2022 (11/67) the Respondent stated that he had an independent surveyor coming to the property after the windows were done to do a report on damp and energy efficiency, after which he would seek legal advice and take the Applicant to court, stating "*I can and will pay the back rent when the property has had all the relevant updates.*" The Respondent stated that the Applicant would hear from his solicitor soon.
29. The Respondent did not appear to have proactively contacted the Applicant in advance on any occasion to state that he was withholding rent, as might be expected to show good faith. Although the Respondent mentioned withholding rent in respect of the roof, he failed to make payment of the outstanding rent when the work to the roof was carried out. He then failed to make payment of the outstanding rent when the window repairs were carried out.
30. The Respondent failed to lodge any evidence to show that he was justified in withholding rent in respect of repairs, that he withheld rent in good faith, and

that he had the sum ready to make payment. The Respondent also failed to attend at the hearing to put forward any evidence in this regard.

31. While the Tribunal considered that there were issues in respect of necessary repairs, which may have indicated a failure of the repairing standard, the evidence suggested that the Respondent had got into difficulty with his rent on occasions where no mention was made of withholding rent.
32. Even if the Respondent was justified in withholding rent, the works have now been carried out to the roof and the windows, yet the Respondent has not made payment of the withheld rent. He has not raised an application in terms of the repairing standard and he has produced no evidence to support his assertion that insulation is required, or to justify continuing to withhold rent in this regard.
33. The Tribunal took into account the evidence that some of the problems within the Property may be due to the actions of the Respondent in using an industrial-style gas heater, and in not opening windows, thereby creating condensation.
34. The Tribunal is satisfied that Ground 12 has been established.
35. The Tribunal is satisfied that a valid Notice to Leave was correctly issued to the Respondent in terms of the Act.
36. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit.
37. The pre-action requirements were met.
38. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. The Respondent was not in attendance to put forward any further reasons why it would not be reasonable to grant the order, despite having been notified of the hearing.
39. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

40. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 13th March 2023

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

8th February 2023
Date