



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/22/3404

Re: Property at 18 Mossneuk Street, Coatbridge, ML5 5BA ("the Property")

Parties:

Ms Catherine Hunter, 2A Westmount Park, Newtonards, County Down, BT23 4BP ("the Applicant")

Ms Caroline McKinney, 18 Mossneuk Street, Coatbridge, ML5 5BA ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 21 August 2023, the Applicant was not in attendance but was represented by Mr John MacAulay of Ennova Law. The Respondent was present.

In advance of the CMD the Tribunal had received from Mr MacAulay an email dated 21 August 2023 with attachment being an up to date rent statement.

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

Background

A CMD had previously taken place on 20 February 2023. The Respondent did not attend on that occasion. The Tribunal then issued a decision granting an eviction order. The Respondent applied to the Tribunal to recall the Tribunal's Decision of 20 February 2023 and that application was granted by further decision of the Tribunal dated 20 April 2023. A further CMD was therefore assigned for 21 August 2023.

The Tribunal noted the following background once again:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 7 May 2019.
- ii. The rent payable in terms of the PRT was £695 per calendar month payable in advance on the seventh day of each month.
- iii. On 27 July 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 25 August 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £3,686.00.
- iv. By email dated 16 September 2022 the Applicant served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The rent arrears due as at the date of the application were stated to be £4,395.59.

The CMD

At the CMD the Applicant's representative made the following representations:-

- i. That the current rent arrears outstanding and due by the Respondent are £7,694.83.
- ii. The last payment received from the Respondent was in a sum of £325 on 7 June 2022.
- iii. The Applicant has not yet enforced the payment order granted on 20 February 2023 in a sum of £4,395.59. She wanted to ascertain the outcome of this CMD.
- iv. Universal Credit is paid directly to the Applicant. There is a shortfall between the Universal Credit paid and the rent due under the PRT which gives rise to the arrears due.
- v. The Respondent is still living in the Property.
- vi. There has been no contact from the Respondent since she intimated her application for recall of the Decision of the Tribunal dated 20 February 2023.
- vii. The Respondent is believed to be unemployed and living with her 2 adult children, one of whom is employed.
- viii. The Applicant does not rent out any other property.
- ix. The Applicant seeks an eviction order.
- x. The Applicant is adversely affected by the arrears accrued which are significant. The Applicant should not be accommodating the Respondent in these circumstances.
- xi. Pre-action letters were sent to the Respondent on 15 December 2022 and 23 January 2023 albeit late but some time ago now.
- xii. It is reasonable to grant an eviction order.

At the CMD the Respondent made the following representations:-

- i. The Respondent continues to live in the Property. She is 48 years of age and lives with her 20 year old son and 22 year old daughter.
- ii. The Respondent does not work due to illness. Her daughter is employed part-time in a warehouse. Her son does not work, is not in further or higher education and is not in receipt of benefits. He does not believe someone young and fit should be on benefits. He has applied everywhere for a job. The Respondent stated she had held him back. He was her carer for a period of time. She did not know a Carers Allowance was available.
- iii. The Respondent is in receipt of Universal Credit of which £450 is paid to the Applicant for housing costs and the Respondent receives in her hands a further sum of £432 per month. She also now receives Adult Disability Payment in a sum of £272 per month. She has only received one payment of Adult Disability Payment thus far.

- iv. The Respondent accepted the rent arrears to be due albeit she seemed surprised the amount was so high.
- v. The Respondent does not want to be evicted. She loves the property and where she stays.
- vi. The Respondent suffered an incident in 2018 where she was held at knife point. She had a break down thereafter and has been in receipt of counselling and psychiatric support. She has also been diagnosed with Post Traumatic Stress Disorder.
- vii. As a result of the incident her situation has deteriorated. She became a different person. She would stay in bed and not move. She suffered severe back pain as a result and is now suffering other conditions. She has been in hospital 3 times this year. She was becoming buried in debt.
- viii. She took advice from the Citizens Advice Bureau. She was advised to submit a Criminal Injuries Compensation claim. She has not done that yet. She doesn't want to keep going over the incident.
- ix. The Respondent previously applied for a Discretionary Housing Payment which was refused. She reapplied in February 2023 but hasn't heard anything. She hasn't chased that.
- x. She would like to pay the ongoing rent and reduce the arrears. She could pay £245 from her Adult Disability Payment to make up the ongoing rent. She could pay an additional sum of £155 towards the arrears, more if she is able to do so.
- xi. In response to questions from the Tribunal as to why she has paid nothing at all since June 2022 the Respondent stated that she has 4 children and 3 grandchildren and used her money to get them what they needed.
- xii. She recognises that things have to change. She has other debts – Council Tax, a debt due to Scottish Power of around £4,000 and 2 catalogue debts of around £240 and £700 respectively. You pay the latter two debts at £10 per month.
- xiii. The Respondent has spoken to the local authority and has been on the housing list for around 3 years. She has spoken to a housing officer who has said an eviction order needs to be granted for your application to gain priority.
- xiv. The Respondent wishes the Guarantor under the PRT, her brother, not to have to pay the arrears.
- xv. The Respondent apologised for letting the Applicant down.

Mr McAulay for the Applicant rejected the Respondent's payment proposal.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 7 May 2019.
- ii. The rent payable in terms of the PRT was £695 per calendar month payable in advance on the seventh day of each month.
- iii. On 27 July 2022, the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 25 August 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £3,686.00.
- iv. By email dated 16 September 2022 the Applicant served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The rent arrears due as at the date of the application were stated to be £4,395.59.
- vi. That the current rent arrears outstanding and are £7,694.83.

- vii. The Respondent is still in occupation of the Property with her adult son and daughter.
- viii. The Respondent is unable to work due to illness.
- ix. The Respondent's 20 year old son is unemployed.
- x. The Respondent's son has made no application for state benefits.
- xi. The Respondent's 22 year old daughter is in part-time employment.
- xii. Neither of the Respondent's son or daughter contribute to the ongoing housing costs and rent in particular.
- xiii. The Respondent is in receipt of Universal Credit and Adult Disability Payment.
- xiv. Housing costs of £450 are paid directly from Universal Credit to the Applicant.
- xv. The Universal Credit housing costs fall short of the rent due to the Applicant in terms of the PRT.
- xvi. The Respondent has made no other payment to the Applicant since June 2022.
- xvii. The Respondent has made no claim for Criminal Injuries Compensation.
- xviii. The Respondent's first application for a Discretionary Housing Payment was refused. The Respondent does not know what happened with a subsequent similar application. She has made no enquiries.
- xix. The Respondent has failed to engage with the Applicant.
- xx. The Respondent has a number of other debts which she is unable to pay.
- xxi. It reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Tribunal carefully considered the parties' submissions and considered whether or not it would be reasonable to grant an eviction order.

The Tribunal took into account that the rent arrears now total in excess of 11 months rent. The Respondent has made no payment to the Applicant since June 2022. She has failed to communicate or engage with the Applicant and is struggling with other debts too. Whilst sympathetic to the effect the serious incident at knife point in 2018 has had upon the Respondent nevertheless the Tribunal requires to balance the interests of the Applicant as the landlord who has accommodated the Respondent and her two adult children unpaid for 11 months.

The Tribunal considered whether the Applicant had complied with the pre-action protocols referred to in Schedule 3, Ground 12, paragraph 4(b) of the 2016 Act. Whilst the Tribunal took the view that the Applicant had not so complied the Tribunal, had regard to the fact that the Respondent had made two applications for a Discretionary Housing Payment, that she had received support from Mr Melvin, Housing Advice Network Officer and that she had received letters from Ennova Law in December 2022 and January 2023 which, albeit late, signposted her to sources of financial help and support. The tribunal therefore determined that it is reasonable to grant an eviction order under Ground 12 of Schedule 3 of the 2016 Act.

Decision

The Tribunal granted an eviction order in favour of 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.

Gillian Buchanan

21 August 2023

Legal Member/Chair

Date