



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/3793

Re: Property at Flat 0/1, 8 Bruce Street, Dumbarton, G82 1HX (“the Property”)

Parties:

Mrs Evelyn Darby, 20A Milton Hill, Dumbarton, G82 2TS (“the Applicant”)

Mr Dylan Garden, Miss Keely Gregory, Flat 0/1, 8 Bruce Street, Dumbarton, G82 1HX; 49 Ballyhennan Crescent, Tarbet, Argyll and Bute, G83 7DB (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is a Rule 109 case where the Applicant is seeking an eviction order under ground 4 of the Act. The Applicant included an affidavit, Notices to Leave with evidence of service, section 11 notice with evidence of service, and copy tenancy agreement with the application. The tenancy agreement commenced on 20th June 2023.
2. Service of the application upon the Respondent, Mr Garden, was made by Sheriff Officers on 6th February 2023. Mr Garden informed Sheriff Officers that Ms Keeley was no longer resident in the Property.
3. By emails dated 7th and 8th March 2023, the Applicant lodged a personal statement and structural report in respect of her current address.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 8th March 2023. The Applicant was in attendance. The Respondent, Mr Garden, joined the CMD some time after commencement. Ms Keeley did not attend.

5. The Applicant said the Property had been her main residence in the past. She wishes to return to it now, due to problems in her current resident. There is water ingress to a communal walkway and this has affected her shower room. The ceiling of the shower room has come down, and she does not now have shower facilities. The issues have been ongoing since she bought the property in 2015 or 2016. The development in which the property is situated is self-factored and there have been problems in trying to get the other homeowners to accept that the walkway is communal and to take responsibility for the repairs. She has carried out some repairs herself, but the concrete requires repair. The situation has become unbearable due to having no shower or bathing facilities since August 2022. Due to ill-feeling from some other residents over the matter, she has received abusive emails. The outstanding repairs also make it difficult for her to sell the property.
6. The Respondent said he was opposing the granting of the order. His initial position was that he was opposing because he had not been treated fairly by the Applicant, who had entered the Property without his permission, and the fact that the Property is damp. The Respondent said he lives alone. He was unable to say exactly when Ms Keeley had left. He has no dependants, and has two dogs in the Property. He is not in employment and is in receipt of Universal Credit.
7. The Respondent initially said he required a period of two months in the Property as he had been informed by the local authority three weeks earlier that he would get social housing in three months. The Respondent said there are issues in terms of the boiler, a leaking kitchen window, no shower or hot water, and some damp. It was his position that the Applicant would be moving into a property with worse issues than her current property. The Respondent said he has been told by the local authority housing department, CAB and his social worker to stay in the Property, until social housing becomes available. The Respondent said he has been assured he will get a property. He has not narrowed down his options and would accept a property in any area. The Respondent said he has mental health issues, and he has a social worker.
8. The Respondent said he has evidence in the form of pictures, videos and documents to prove his case. Asked whether he would be able to get medical, social work and housing evidence for a hearing in respect of reasonableness, he said he would be able to get this. Asked whether he might get representations from the CAB for the hearing, he thought this might be a possibility.
9. The Applicant asked about the possibility of granting the order and delaying execution for a period of two months. The Respondent was opposed to this course of action and said he had been told he may not get social housing for four or five months.
10. The Tribunal considered it would be appropriate to fix a hearing on reasonableness.

11. The Tribunal made a Direction dated 8th March 2023 for further information from parties, in the following terms:

The Applicant is required to provide:

- An address for Ms Keeley or an application for Service by Advertisement accompanied by a report from a tracing agency or Sheriff Officer.

The said documentation should be lodged with the Chamber no later than 21 days from the date of issue of this Direction.

The Respondent is required to provide:

- A note of defence setting out why it would not be reasonable to grant the order. This may include reference to medical and social work-related matters.

The said documentation should be lodged with the Chamber no later than 21 days from the date of issue of this Direction.

12. In its CMD note, the Tribunal advised the Respondent to seek representation from CAB or a suitable housing advice agency or solicitor to prepare a note of defence, and to represent him at the hearing, if at all possible, with the issues to be considered as follows:

- (i) Attempts made by the Respondent to gain alternative housing, the likely timescales involved in the allocation of social housing, and the likely outcome if an eviction order is granted before housing has been sourced. Evidence from the local authority either in the form of a witness or a statement would be helpful in this regard.
- (ii) Medical issues that relate to reasonableness, such as how his health would be affected by homelessness, or the granting of an eviction order. The Respondent may wish to seek medical evidence in this regard.
- (iii) Social work evidence on the reasonableness of granting an eviction order, including the likely impact of this upon the Respondent.

13. The CMD was adjourned to a hearing.

14. By email dated 31st March 2023, the Applicant lodged an updated address for the Respondent, Miss Keeley.

15. By letter dated 21st April 2023, parties were informed of a hearing set down for 1st June 2023.

16. Intimation of the application and hearing was made upon Miss Keeley by Sheriff Officers on 25th April 2023.

The Hearing

17. A hearing took place by telephone conference on 1st June 2023. The Applicant was in attendance. The Respondents were not in attendance.

18. The Tribunal considered the terms of Rule 29. The Tribunal considered that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.

19. The Applicant said her situation has now deteriorated in her current residence, as water ingress has damaged the fire alarm system and she has had to disconnect all alarms. The fire brigade has attended on two occasions. She has been to the homeless team at the local authority as she can no longer continue to live at her residence. She was told by the homeless team that the Respondent had been to the local authority but they had been unable to help him as he had given them limited information. The Applicant said the local authority had indicated that they would now be in a position to assist him, if the order was granted, and that he and his pets would be housed in a homeless unit. The local authority was awaiting the outcome of the hearing before taking matters further.

20. The Applicant said matters are no better with the other residents of at her current address and this is causing her some stress and anxiety. The Applicant said she cannot attend to internal repairs until the external situation is addressed. She has a solicitor involved, but most of the other residents do not agree that the required repairs are communal, and a majority decision is required as the development is self-factored. Before the pandemic, there was a property factor for the development. There are regular meetings, but there is no residents' committee.

21. The Applicant said she relies on the rental income from the Property, but there are arrears outstanding of £3900, and no rent has been paid for 9 or 10 months. Only one rental payment was paid at the start of the tenancy. This is affecting her ability to make repairs at her current residence. She contacted Universal Credit last month and they paid £195 directly to her. This is likely to continue on a monthly basis.

22. Responding to questions from the Tribunal, the Applicant said she rents out another property at a lower rent. The property has been rented long-term. The tenant has a disability and the property has been adapted. The Applicant said she had considered living in that property but felt it would not be fair to displace the tenant, as there are no problems with the tenancy. The Applicant said she previously lived in the Property for around three years.

23. The Applicant said she arranged a visit to the Property, supported and accompanied by a community link worker on 5th May 2023. The Respondent, Mr Garden, was there. He has two dogs. There are five reptile tanks. There was no bedding or toiletries, and it was bare of furniture. The Applicant was not convinced the Respondent is living there. She said it looked like it was a place to keep his pets. The Applicant said the Property was in a bad state, with holes in the wall and damaged décor, but there was no sign of dampness.

Findings in Fact and Law

- 24.
- (i) Parties entered into a private residential tenancy agreement in respect of the Property on 20th June 2022.
 - (ii) The Applicant has served a Notice to Leave upon the Respondents.
 - (iii) The Applicant intends to live in the Property.
 - (iv) The Applicant intends to occupy the Property as her only or principal home for at least 3 months.
 - (v) The Respondents are in arrears of rent.
 - (vi) It is reasonable to grant an eviction order.

Reasons for Decision

25. Ground 4 of Schedule 3 of the Act provides that it is an eviction ground that the landlord intends to live in the let property. The Tribunal may find that this applies if the landlord intends to occupy the let property as their only or principal home for at least three months; and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

26. The Tribunal is satisfied that Ground 4 has been established.

27. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondents in terms of the Act.

28. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties as put forward at the CMD, and the representations of the Applicant as put forward at the hearing. The Tribunal had no direct information from Miss Keeley, who did not attend or make any representations.

29. The Tribunal noted that Mr Garden had not complied with the Direction and had not lodged a note of his defence, or any evidence to support the position put forward by him at the CMD. The Tribunal noted that he is in significant

rent arrears, only having made one payment of rent since the tenancy commenced. The Tribunal noted that the Applicant considers that the condition of the Property is deteriorating as a result of Mr Garden's residence there.

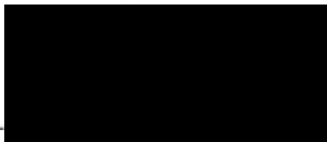
30. The Tribunal considered that the Applicant is living in intolerable conditions in her current residence, with significant water ingress as outlined in the structural report. She is unable to make any progress towards having the issues addressed, and the property is deteriorating. There are now safety issues, as the fire alarm system has been disabled. This is causing the Applicant stress and anxiety. The Applicant relies upon the rental income from the Property, and the arrears are considerable. Universal Credit will only cover a portion of the rent going forward.
31. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the hearing.
32. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

33. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 4th July 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

1st June 2023
Date