



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/23/0650

Re: Property at 107 Rannoch Drive, Cumbernauld, Glasgow, G67 4ES ("the Property")

Parties:

Mr Raymond Croal, 2 Crathie Drive, Denny, FK6 6HN ("the Applicant")

Ms Elizabeth Love, 107 Rannoch Drive, Cumbernauld, Glasgow, G67 4ES ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

At the Hearing, which took place by telephone conference on Wednesday 20 September 2023, the Applicant was in attendance supported by his son, Mr Brian Croal. The Respondent was not present but was represented by Mr John Ballantine of Legal Services Agency Limited, Glasgow.

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

Background

At a Case Management Discussion ("CMD") on 26 June 2023 a Hearing was assigned to resolve disputed issues identified between the parties. The CMD Notes record certain requirements for the Hearing, in particular:-

"The parties will lodge a list of the names and addresses of their witnesses no later than 7 days prior to the date of the Hearing.

"The parties will lodge all documents to be founded upon no later than 14 days prior to the date of the Hearing, the documents to be paginated and a covering inventory or contents page is to be attached."

A Direction was issued to the parties in the above terms.

The Hearing was subsequently scheduled to take place by telephone conference on 20 September 2023.

Prior to the Hearing the Tribunal received the following additional written representations:-

From the Applicant:-

1. Email dated 5 July 2023;
2. Emails (x2) dated 10 August 2023;
3. Email dated 8 September 2023;
4. Email dated 11 September 2023;
5. Email dated 13 September 2023; and
6. Emails (x2) dated 19 September 2023.

For the Respondent:-

Email from Mr Ballantine dated 6 September 2023.

Preliminary Matters

Rule 22(2) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") states:-

"Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse."

The Tribunal raised the following preliminary matters with the parties:-

For the Applicant:-

- i. The Applicant had not lodged any List of Witnesses. The Applicant confirmed only he would be giving oral evidence.
- ii. In that the Tribunal required all documents to be founded upon no later than 14 days prior to the Hearing a number of the Applicant's productions are therefore late.

The Applicant explained that he had been having problems with numeracy and made a mistake on his calendar. Mr Croal stated that his wife had been ill, his son had been ill and he was going between 2 houses. He had therefore been rather busy. Mr Brian Croal stated the Applicant had suffered a stroke in May 2023 and he was also not allowed to drive for a period of 4 weeks and had been hospitalised. The Applicant had intimated the documents to Mr Ballantine and Mr Ballantine intimated that he had no objection to the documents being allowed late as he had seen them all in advance.

For the Respondent:-

- i. The Respondent lodged a List of Witnesses and subsequently an updated List of Witnesses for the Respondent both on 19 September 2023, the day prior to the Hearing. The Tribunal asked Mr Ballantine if he had a reasonable excuse for the List of Witnesses being lodged late.

Mr Ballantine stated that intimation of the Hearing had been extremely late. He was not aware of the Hearing until 21 August. In addition, the Respondent had suffered a couple of falls and had been quite unwell in the interim and Mr Ballantine had difficulty contacting her. The Respondent first passed to Mr Ballantine in early September details of the proposed witnesses. Telephone numbers were wrong and Mr Ballantine was not able to contact them initially to determine whether they would be willing to appear at the Hearing.

Also, due to a lack of capacity, Mr Ballantine could not pull together the details at an earlier date. He is only to work on cases such as this one or two days each week.

In response to the Tribunal asked why preparations had not got under way prior to the Hearing date being intimated, it having been determined at the CMD on 26 June 2023 that the Hearing would be required. Mr Ballantine stated that preparations had commenced. However, due to the Respondent's health he had struggled to take instructions from her. She had suffered a period of poor health and poor mobility and had been unable to deal with her affairs.

- ii. During the course of discussions, Mr Ballantine stated that on 7 September 2023 he had sent to the Tribunal by e-mail at 4:56pm affidavits of the Respondent and a witness. These, he said, did not fall within the definition of documents to be founded upon by the Respondent which required to be lodged no later than 14 days prior to the Hearing. In addition, he had lodged by e-mail on 8 September a Second Inventory of Productions for the Respondent.

The Affidavits were intimated to the Applicant at 8:57am on the day of the Hearing. He did not consider the Applicant entitled to see the Affidavits at an earlier date so as not to give him an advantage.

Mr Croal intimated that he did not have any objection to the late List of Witnesses. However, he did not understand why he could not see the Affidavits previously. He made reference to submissions for the Respondent having been produced late prior to the CMD and to being unaware of their content until the CMD took place.

The Tribunal determined that it would adjourn to consider the preliminary matters outlined above and to make decisions thereon as required in terms of Rule 22(2).

Mr Ballantine also intimated that, the previous week, he had made a settlement proposal to the Applicant but had not heard back in response. He asked if the Tribunal would allow time for some discussions between him and the Applicant to take place. The Tribunal adjourned and left the conference line open for Mr Ballantine and the Applicant to discuss the application to see whether or not a resolution could be achieved.

Parties' Discussions

Following the initial adjournment, the parties reported that they had not been able to reach agreement and the Applicant sought information from the Tribunal on the effect of the Cost of Living (Tenant Protection)(Scotland) Act 2022 on any eviction order that might be granted.

The Tribunal stated that, having regard to the basis of the Applicant's application, if any eviction order is granted whilst the temporary measures brought in by the 2022 Act remain in force then the eviction order could not be enforced for the lesser of 6 months or the period to the date upon which the temporary measures cease to have effect. The Tribunal also referred to the Scottish Government's previously stated intention to extend the temporary measures brought in by the 2022 Act to 31 March 2024, Regulations for which had been laid before Parliament but not yet passed.

The Applicant asked the Tribunal if there was any element of discretion in the application of the temporary measures relative to eviction orders and the Tribunal stated that there was no such discretion.

To enable the parties to discuss the position further another adjournment took place. Following that adjournment the parties reported on progress. Agreement had still not been reached. Mr Ballantine sought a further adjournment to take instructions from the Respondent who was not in attendance at the Hearing due to travelling to Cyprus for a wedding. Her precise movements were not known to Mr Ballantine but he wished to attempt to speak with her.

Following that further adjournment the parties reported that they had managed to reach agreement on a determination of the application.

Resolution Reached

The parties reported to the Tribunal that they had agreed that an eviction order should be granted by the Tribunal subject to enforcement of the eviction order being delayed by a period of 7 months, namely to 20 April 2024.

The Respondent had paid rent arrears previously outstanding and had agreed to allow the Applicant to carry out an inspection of the Property.

The Tribunal reminded the parties that they both remain bound by the terms of the PRT.

In light of the parties having reached agreement on a determination of the application, of consent, the Tribunal granted an eviction order against the Respondent in favour of the Applicant and delayed execution thereof to 20 April 2024 in terms of Rule 16A(d) of the Rules.

Decision on the Preliminary matters

For completeness, the Tribunal also reported its decision on the preliminary matters.

With regard to the late documentation lodged by the Applicant, the Tribunal accepted that the Applicant had a reasonable excuse for documentation having being lodged late and took into account that Mr Ballantine had seen all of that documentation and had no objection to the late lodging.

With regard to the List of Witnesses for the Respondent, the Tribunal took the view that there was not a reasonable excuse for the List of Witnesses being lodged on the day prior to the Hearing and refused to allow the List of Witnesses late.

With regard to the Affidavits said to have been sent to the Tribunal on 7 September 2023, the Affidavits would be allowed although late.

Decision of Eviction Order

The Tribunal granted an eviction order against the Respondent in favour of the Applicant and delayed execution thereof to 20 April 2024.

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

20 September 2023
Date