



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/23/1438

Property : 7 Malloch Crescent, Johnstone PA5 9HH (“Property”)

Parties:

Hub (Scotland) Ltd, Bridgend Compound, Bridge Street, Linwood PA3 3DR (“Applicant”)

Penny Lane Homes, 10-12 High Street, Renfrew PA4 8QR (“Applicant’s Representative”)

Paula Green and Gerald Green, 7 Malloch Crescent, Johnstone PA5 9HH (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to refuse to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 4 February 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 18 January 2023 ("Notice to Leave"); copy email dated 18 January 2023 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 4 May 2023 and communications to the Respondent regarding arrears dated 4, 10 and 17 January and 21 February 2023. The Tribunal had sight of a sheriff officer’s certificate of service evidencing service of the Application on 27 July 2023.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 24 August 2023 by teleconference. Ian Troy of the Applicant’s Representative was in attendance. There was no appearance by the Respondent. Mr Troy told the Tribunal that the last contact he had with Mrs Green was on 28 June when she had told him she had made no progress in obtaining further benefits. He said that Mr Green had a stroke before moving into the Property which is a bungalow. He had no information regarding inquiries made by the Respondent for alternative accommodation. He said that neither Respondent was in employment and that Mrs Green is a full time carer for Mr Green. Mr Troy told the Tribunal that he had managed properties for the Applicant for 10/15 years and that the portfolio owned by the Applicant is now approximately 5 properties. He said the Applicant is selling properties one by one.

The Tribunal noted that at the date of service of the Notice to Leave the arrears were £552.55 which was less than one month’s rent. The Tribunal noted that the rent had been increased to £669 and that the current arrears were £610.22. Mr Troy said that all payments received were from Renfrewshire Council. He said that the Respondent did not make top up payments. He said that housing benefit is paid in arrears. The Tribunal noted that the housing benefit now being paid is £609.24. Mr Troy said that the Applicant was concerned that the benefits might be reduced. He could not tell the Tribunal why the benefits had fluctuated. He said he had asked Mrs Green to complete a form showing all benefits the Respondent received but she had not returned the form.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 4 February 2021 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 18 January 2023.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 18 February 2023.
4. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
5. At the date of service of the Notice to Leave the rent arrears were £552.55.
6. At the date of the CMD the rent arrears were £610.22.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. In the circumstances, it would not be reasonable to grant an order for eviction.

Reasons for the Decision

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statement of rent arrears provided and noted that at the date of service of the Notice to Leave and at the date of the CMD although the rent had been in arrears for three or more consecutive months, the rent arrears were equivalent to less than one month's rent. When considering the question of reasonableness the Tribunal should take into account whether rent arrears were due wholly or partly as a consequence of a delay in the payment of benefits. Rent is payable in advance. If the benefits were paid in advance, there would be no rent arrears. Mr Green has suffered a stroke. Mrs Green is his full time carer. The Applicant owns a number of properties. The Tribunal was told the Applicant is selling the properties one by one, but intention to sell is not the ground for eviction founded upon in this case. The Tribunal considered all relevant factors and attached particular weight to the low level of rent arrears. Although the ground for eviction had been established, the Tribunal determined that it would not be reasonable to grant an order for eviction.

Decision

The Tribunal refuses to grant an order for possession of the Property.

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.

Joan Devine

**Joan Devine
Legal Member**

Date : 24 August 2023