



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/21/0280

Re: Property at 57 Cumbrae Drive, Motherwell, ML1 3LJ (“the Property”)

Parties:

Mr Andrew McMahon residing at 20 Eastfield Road, Witney, Oxfordshire, OX28 1HN, and Mrs Samantha MacLeod, residing at 65 Viewpark Road, Motherwell, ML1 3H (“the Applicants”)

Miss Gillian Stobie, Mr Liam Stobie, Mr John Vogwell, all residing at 57 Cumbrae Drive, Motherwell, ML1 3LJ and Mr Gary Stobie, residing at 1 Plested Court, Aylesbury, Buckinghamshire HP22 5UB (“the Respondents”)

Tribunal Members:

Jim Bauld (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. Three separate applications had been lodged by the applicants. Two applications seek an eviction order in respect of a private residential tenancy (FTS/HPC/EV/20/2562 and FTS/HPC/EV/21/0280). The third application seeks an order for payment of rent arrears arising from that tenancy (FTS/HPC/CV/21/0281)
2. By application dated 5 February 2021, the applicants sought an eviction order against the respondents in respect of rent arrears. It was given reference number FTS/HPC/CV/21/0280

3. On 17 February 2021 this application was accepted by the tribunal and referred for determination by the tribunal along with the two other applications
4. It was decided that all three applications should also have CMDs set to take place on 5 March 2021 and that all three applications would be considered together
5. The Case Management Discussion (CMD) took place on 5 March 2021 via telephone case conference. The applicant Samantha MacLeod was present and was represented by her letting agent, Ms Vikki McGuire, Jewel Homes Limited, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF. Mr McMahon did not attend. Only one of the Respondents attended, namely Mrs Gillian Stobie. She confirmed that Liam Stobie and Gary Stobie were her sons and that John Vogwell was her husband
6. The tribunal decided that all three applications should be adjourned and that a further case management discussion in respect of all three applications will take place on 23 April 2021 at 10 am. Full reasons for the adjournment are set out in the Note issued after the CMD

The adjourned Case Management Discussion

7. The adjourned Case Management Discussion (CMD) took place on 23 April 2021 via telephone case conference. The applicant Samantha MacLeod was present and was again represented by her letting agent, Ms Vikki McGuire, of Jewel Homes Limited. Mr McMahon did not attend. None of the respondents attended nor were they represented. The tribunal was satisfied that all had been given appropriate notice of the date and time of the CMD.
8. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions with regard to the application and the applicant and the applicant's representative confirmed that they wished the tribunal to grant the eviction order sought in the application

Findings in Fact

9. The applicants and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which commenced on 5 April 2019.
10. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. ("the Act")
11. The agreed monthly rental was £500.
12. Arrears began to accrue from September 2019.

13. On 1 July 2020 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served by email upon the respondents and became effective on 7 January 2021
14. The notice informed the respondents that the landlord wished to seek recovery of possession using the provisions of the Act.
15. The notice was correctly drafted and gave appropriate periods of notice as required by law.
16. The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant had been in arrears of rent for three or more consecutive months
17. At the date of the lodging of the application arrears amounted to £3,949.73
18. The amount of arrears at the date of the CMD on 23 April 2021 were £5,415.33
19. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal

Reasons for Decision

20. The order for possession was sought by the landlord based on a ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground
21. The tribunal noted the evidence presented on behalf of the landlords with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. The last payment made by the tenants personally had been a payment of £700 in February 2020.
22. Since that date the only payments made toward the rent account had been paid directly to the landlord's agent from the tenants' Universal Credit claim. The payments between March 2020 and December 2020 had been of either £259.44 or £258.218. Since December 2020 only two payments have been made via Universal Credit. These payments were £65.95 on 19 January 2021 and £34.40 on 19 March 2021.
23. No explanation has been provided by the tenant for their consistent and continuing failure to pay the monthly rent as it fell due. The applicant's representative indicated that their understanding was that both Mr Vogwell and Mr Liam Stobie were now in full time employment, though they had been out of work in the past. The tenants had failed to respond to all attempts by the landlords and their agent to contact them to discuss the arrears.

24. Arrears as at the date of the CMD amounted to £5,415.33 which amounted to far in excess of one month's rent. The tenants had been in arrears for a continuous period in excess of 18 months.
25. The tribunal accepted the unchallenged evidence of the applicant regarding the outstanding sums. The tribunal noted that the respondents had failed to engage with both the applicant and with the tribunal despite having ample opportunity to do so
26. The ground for eviction was accordingly established
27. The ground for eviction under which this application was made is the ground contained in paragraph 12 of schedule 3 of the 2016 Act. The ground is that the that the tenant had been in arrears of rent for three or more consecutive months and at the date of the hearing owes more than one month's rent. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
28. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact
29. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
30. In this case the tribunal finds that it is reasonable to grant the order.
31. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenants are making any attempt to meet the rent. It was suggested by the landlord's representative that the tenants have indicated they will move as soon as they can find another house. The house is currently occupied by three of the tenants who are all adults. There are no young children within the property
32. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.



Jim Bauld
Legal Member/Chair

23/05/2021

Date