



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/22/2062

Property : 2 Bridgegate, Peebles EH45 8RZ (“Property”)

Parties:

Trustees of Lodge Peebles Kilwinning 24, 2 Provost Melrose Place, Peebles EH45 9BP (“Applicant”)

Richard McCurdie, Trustees of Lodge Peebles Kilwinning 24, 48 Crossburn Farm Road, Peebles EH45 8EG (“Applicant's Representative”)

Kathryn Lowther and Iain McLean, 2 Bridgegate, Peebles EH45 8RZ (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Sandra Brydon (Ordinary Member)

Decision

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

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Notice to Leave addressed to each Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 27 June 2022 (“Notice to Leave”); a rent statement for the period December 2018 to May 2022; two royal mail proof of posting dated 24 June 2022; two royal mail proof of delivery dated 27 June 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003; email from the local authority acknowledging receipt of the notification and sheriff officer's execution of service certifying service of the Application on 10 October 2022.

Case Management Discussion

2. A case management discussion (“CMD”) took place before the Tribunal on 15 November 2022 by teleconference. Richard McCurdie representing the Applicant was in attendance as was the first Respondent, Kathryn Lowther. In advance of the CMD the Tribunal had asked to have sight of the tenancy agreement between the Parties. In response Mr McCurdie explained that the tenancy agreement had been lost. He produced a copy of a note of a CMD held on 25 August 2021 in a civil application made by the Applicant against the Respondent which proceeded under reference FTS/HPC/CV/21/1051. In that case Mr McCurdie attended the CMD as did the First Respondent. The note of the CMD indicated that parties did not dispute that there was a tenancy agreement between them and that the rent was £500 per month. The CMD was adjourned to allow Parties to explore extra judicial settlement.
3. Mr McCurdie told the Tribunal that the tenancy had commenced in December 2018 and the rent was £500 per month. Ms Lowther said that the tenancy commenced in October 2018 although a lease was not put in place immediately. She said that herself and Mr McLean were joint tenants and that the rent was £500 per month.
4. The Tribunal noted that the application for eviction had been lodged with the Tribunal on 27 June 2022 which was the same date as delivery of the Notice to Leave. The Tribunal explained that in terms of sections 52 and 54 of the Act they could not entertain the Application unless the Tribunal was persuaded it was reasonable to do so. Mr McCurdie said that he was not legally qualified. He said the situation had been ongoing for 2 years. He asked for the Tribunal’s assistance. Mr McCurdie said that the arrears started in January 2019. An order was granted in October 2021 for payment of £5380. He said he had tried to work with the Respondent who said they would pay regularly. He said that the Applicant held charitable status. He said they were haemorrhaging money. He said the arrears were now £9130. He said the Respondent continued to occupy the Property but paid nothing. He said the Applicant relied on the rental income to continue to function as a charity. He said there was no mortgage on the Property. He said that the charity owned the lodge and what had formerly been the caretakers house. He said the Applicant intended to let the Property on the open market if they were granted an order for possession.
5. Ms Lowther said that she had received a phone call from “the landlord” during the covid lockdown during which the landlord said the rent would be frozen. She said the landlord’s name was Adam McArthur. She could not recall the date of the call. She said that he did not put a time limit on the rent freeze. She said the Council had written to her saying Adam McArthur wished to help her. The

Tribunal noted that the title to the Property was held in the Applicant's name and only the owner of the Property could grant a lease of the Property. Ms Lowther said she had a copy of the tenancy agreement and the landlord was Adam McArthur. She said she was not obliged to pay rent but she wanted to do so. She said she felt less guilty about not paying rent after Mr McArthur told her there was no mortgage on the Property. She said she had not spoken to Mr McArthur since the telephone call during covid lockdown when he had said the rent would be frozen.

6. The Tribunal asked Ms Lowther how she had come to occupy the Property. She said that Mr McLean lived there with a person called "Curly". She moved into the Property when that person moved out. She said she received the keys from Mr McArthur and paid a deposit to him.
7. Ms Lowther said that she was on medication for stress. She said that there was no alternative accommodation in Peebles and it was too stressful to travel to Galashiels where there may be availability. She said that her daughter had witnessed her father stab himself. She said that she had been working with the Council and had been in touch with Shelter over a 2 year period. She said the Council now told her she could receive housing benefit from December 2022. Ms Lowther said that she lived in the Property with Mr McLean and her 11 year old daughter.
8. Ms Lowther said that she and her partner were self employed. She said she worked in product sales. She said she had not been able to work but hoped to get back to operating her business. Ms Lowther said that Mr McLean worked in construction. She said that his work was weather dependent. The Tribunal asked what grants and benefits she had applied for during lockdown. Ms Lowther said that she had not been aware that she was entitled to anything. The Tribunal asked what advice she had received in that regard from Shelter. She said she did not ask Shelter about benefits.
9. The Tribunal noted that an order for payment had been made and asked Ms Lowther about that. She said that she had not received any of the paperwork.
10. The Tribunal asked Mr McCurdie who was Adam McArthur. He said that the gentleman's name was Adam Arthur and he was one of the trustees of the Applicant. He said he could provide an affidavit from Mr Arthur in which he would state that a rent freeze was not agreed. As regards the payment order, Mr McCurdie said that there were 2 case management discussions before the payment order was granted.

11. The Tribunal adjourned briefly to discuss further procedure. They reconvened and told the Parties they wished to consider the notes of the case management discussions in the civil application relating to the Property before making a decision.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement in late 2018 ("Tenancy Agreement").
2. The rent payable in terms of the Tenancy Agreement was £500 per month.
3. The Notice to Leave was served by recorded delivery on 27 June 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
5. Notice of the date of the case management discussion had been given to the Respondent on 10 October 2022.
6. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.

Reasons for the Decision

12. The Tribunal determined to allow the Application to proceed notwithstanding it having been made during the notice period. The Tribunal determined it was reasonable to allow the Application to proceed in light of the high level of rent arrears.
13. At the CMD the Parties agreed that a tenancy agreement existed and that the rent was £500 per month. There was a dispute between the Parties as to the identity of the landlord and as to whether or not an agreement had been reached in terms of which the Respondent was entitled to occupy the Property rent free. The Tribunal had regard to the Decision of a differently constituted Tribunal in FTS/HPC/CV/21/1051. That application was between the same Parties and related to the Property. In the application the Applicant sought payment of rent arrears. A CMD took place in that case on 28 August 2021. Mr McCurdie and Ms Lowther attended. At that time an order was sought for payment of £3750. The CMD was continued to 13 October 2021 to allow the Parties to discuss settlement. Mr McCurdie and Ms Lowther attended the CMD on 13 October 2021. The sum sought was amended to £5380. The Tribunal made 3 findings in fact as follows :

1. *The Applicant lets the Property to the Respondents in terms of a private residential tenancy with a start date of 15 October 2018.*
 2. *In terms of the tenancy agreement, rent of £500 is payable on the 15th of each month.*
 3. *As at end August 2021, the Respondents were in arrears of rent of £5380.*
14. The matters in dispute between the Parties have therefore already been determined in the application proceeding under reference FTS/HPC/CV/21/1051. In those circumstances the Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.
15. 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. The Applicant sought recovery of possession of the Property on the basis set out in Ground 12 which states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
16. In terms of the Tenancy Agreement the rent is £500 per month. As at end August 2021 the Respondent was in arrears of rent of £5380. The Tribunal therefore determined that the ground for eviction had been established. Having considered the submission from both Mr McCurdie and Ms Lowther, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants 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

Legal Member:

Date: 15 November 2022

