



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/23/0110

Re: Property at Flat 3, 76 Regent Quay, Aberdeen, AB11 5AR (“the Property”)

Parties:

Inchwood Ltd, 2 St Davids Court, Dalgety Bay, Dunfermline, Fife, KY11 9SU (“the Applicant”)

Mr Bogdan Macarau, Flat 3, 76 Regent Quay, Aberdeen, AB11 5AR; Mr Radu-Stefan Chelariu, present whereabouts unknown (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Angus Lamont (Ordinary Member)

Decision (first Respondent present and in absence of the second Respondent)

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

Introduction

This application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and of the initial Case Management Discussion (CMD) was effected upon the first respondent by Sheriff Officers on 18 August 2023. The second respondent has not resided in the property for a number of months. Lawful service by advertisement on the Chamber website has taken place

A CMD took place by teleconference on 6 December 2023 at 10.00 am. The applicant was represented by Mr Christopher Minchin of Winchester Lettings Limited (assisted by a colleague Miss Billie Redgate). The first respondent participated in the hearing and represented his own interests. The second respondent failed to participate.

Findings and Reasons

The property is Flat 3, 76 Regent Quay, Aberdeen AB11 5AR. The applicant is Inchwood Ltd who is the heritable proprietor and registered landlord. The respondents are Mr Bogdan Macarau and Mr Radu-Stefan Chelariu who are the named joint tenants.

The private residential tenancy commenced on 13 February 2021. The agreed rent in terms of the written lease was £460 per month. The respondents are jointly and severally liable for payment of the full rent. The named landlord is St Andrews Estates (Scotland) Ltd. The applicant purchased the property from this company.

When both the notice to leave was served and when the application was made to the tribunal the proposed eviction was based upon arrears of rent and the ground relied upon was ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondents are in rent arrears over three consecutive months.

The applicant's representative intimated a wish to amend the proceedings. The additional ground sought to be relied upon is ground 12A, as introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. This requires 'substantial rent arrears' which are defined as rent arrears of 6 months' or more.

The tribunal would be required to grant permission for the proposed amendment in terms of Section 52(5)(b). The tribunal was not satisfied that the necessary prerequisites were fulfilled, not that it would be fair nor in the interest of justice to allow the proposed amendment. Whilst it could be argued unfair to the applicant as ground 12A did not exist at the time that the notice to leave was served the level of rent arrears would not have justified reliance upon it anyway. The rent statement discloses that at that time £1,865 was outstanding. This was 4 months' rent. Even at the time the application was made in January 2023 less than 6 months of rent was outstanding.

The tribunal considered the application under ground 12 only therefore.

The tribunal found that the notice to leave upon which the eviction application proceeds is valid. It is dated 19 October 2022. 28 days' notice required to be given at the time of service. The notice served states an application will not be submitted to the tribunal for an eviction before 19 November 2022. The notice was served up the respondents by email on 19 October 2022. Sufficient notice was given.

An up to date rent statement was lodged for the hearing. The total outstanding rent is now £6,670. Ground 12 was found to be established. The tribunal proceeded to consider the issue of reasonableness.

The second respondent no longer resides in the property. He left in or about February 2023. has not offered any opposition to the application and the granting of an eviction order will have no impact upon him.

The first-named respondent continues to live in the property. He lives there alone and has no dependents. He is employed and has had more than adequate income to make payments of rent himself but has chosen not to do so. He has entered into numerous conversations with the applicants representative regarding making payments of rent but has failed to do so. The only payment he has made in the last year is one of £500 in April 2023. He has refused to accept that he is solely liable for the full rent despite being advised on numerous occasions.

The applicant has evidenced to have signposted the respondents to advice organisations regarding the arrears of rent in compliance with the rent arrears pre-action requirements.

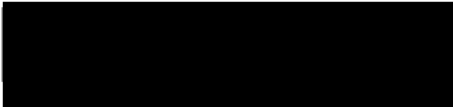
There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 notice having been issued. In the event of an eviction order being granted that the local authority is under an obligation to make alternative accommodation available to the first respondent.

It is unreasonable to require the applicant to continue to make the tenancy available for the first respondent given his clear failure to make payment of rent.

In all of the circumstances the tribunal determined that it was reasonable to grant the eviction order sought by the applicant.

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

6 December 2023

Date