



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/23/2274

Re: Property at 45 3/L Dens Road, Dundee, DD3 7JD (“the Property”)

Parties:

Ms Bharati Patel, 31 York Road, Middlesex, HA6 1JJ (“the Applicant”)

Mr Kane Stewart, 45 3/L Dens Road, Dundee, DD3 7JD (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. Case management discussions (“CMDs”) took place in this case on 26 October 2023 and 29 January 2024. The Tribunal issued notes following those discussions. The Tribunal assigned a Hearing for 4 April 2024 at 10am to consider any evidence and submissions the parties wished to produce in relation to the issue of reasonableness. The Tribunal issued letters to the parties on 28 February 2024 providing the conference call details and advising that parties were required to take part in the Hearing.

The Hearing – 4 April 2024

3. The Hearing took place by conference call. The Applicant was represented by Ms Hazel Young. The Respondent did not join the conference call and the Hearing proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/24/1092. The Applicant's representative explained that an up to date rent statement was lodged yesterday, which shows that the rent arrears have increased to £2,330. Since the case last called, the Applicant's representative has tried to make contact with the Respondent, without success. There have been telephone calls made and emails sent to the Respondent but he has not responded. The Applicant's representative has tried to work with the Respondent to manage the rent arrears but the Respondent has not engaged with that process. He has not made the payments towards arrears which he previously told the Tribunal he would. The Applicant's representative has made an application for the housing element of any benefit claims but that application has been rejected. It is believed that the Respondent is in employment and not in receipt of benefits. In light of the number of opportunities given to the Respondent to reduce the rent arrears and the fact that rent arrears have increased, it was submitted that it was reasonable for the Tribunal to grant the order for eviction.

Findings in Fact

4. The parties entered into a private residential tenancy which commenced 23 January 2023.
5. The Applicant served Notice to Leave on the Respondents by email on 10 May 2023.
6. The Respondent has been in rent arrears for more than three consecutive months.

Reason for Decision

7. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the Hearing. The Applicant relied upon ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent failed to participate in the Hearing and failed to lodge any submissions on the issue of reasonableness. The rent statement produced demonstrates that the Respondent has been consistently in arrears of rent since May 2023. The Tribunal was satisfied that ground 12 was established.
8. When the application was made, the balance of arrears was £940. The Respondent lodged a form entitled "defence form" dated 18 September 2023. In that form, the Respondent indicated that if he had a few more months in the property, he could clear the arrears and be in a more stable position. When the case called for a CMD in October 2023, the rent arrears had increased to

£2,280 and the Respondent advised that he would pay ongoing rent plus £200 per month towards the rent arrears. When the case called again in January 2024, the arrears balance had reduced to £910. The Respondent wished further time to continue making payment towards the balance of arrears. As at today's date, the rent arrears have increased to £2,330 and the information before the Tribunal was that the Respondent has failed to engage with the Applicant's representative.

9. Although the Respondent has made payments to the rent account, he has not adhered to the repayment arrangement that he proposed. Given the significant period of time the Respondent has been in rent arrears, the Tribunal concluded that this is a tenancy which is not sustainable by the Respondent. On balance, the Tribunal concluded that the Applicant would be more prejudiced if the tenancy were to continue. The Tribunal was satisfied that it was reasonable to grant an order evicting the Respondent from 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.

Nicola Irvine

Legal Member/Chair

4 April 2024

Date