



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/19/1611

Re: Property at 4 Hill Place, Inverness, IV2 3AD (“the Property”)

Parties:

Plainstones Limited, Quay Cottage, Findhorn, Forres, IV36 3YE (“the Applicant”)

Mr Colin George Horne, Ms Kholoud Horne, 4 Hill Place, Inverness, IV2 3AD; 4 Hill Place, Inverness, IV2 3AD (“the Respondents”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in respect of the Property.

Background

This is an application for an eviction order dated 9th May 2019 and brought in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”).

The Applicant seeks an eviction order in respect of the Property under grounds 6, 12 and 14 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant lodged a copy of a private residential tenancy agreement which commenced on 1st July 2018, notice to leave as required by section 52(3) of the Act, and notice to the local authority as required by section 56(1) of the Act. The Applicant also provided WhatsApp voice messages from the Respondent Mr Horne to the Housing and Property Chamber. These were not provided to the Tribunal.

The Tribunal had before it certification that case papers and notification of the Case Management Discussion had been served at the address of the Respondents on 30th August 2019 by Sheriff Officers.

No written representations were lodged by either party. An affidavit dated 8th August 2019 from Mrs Christine Hunt in support of the application was submitted to the Tribunal in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion ("CMD") took place on 8th October 2019 at the Mercure Hotel, Church Street, Inverness. The Applicant was represented by Ms Gemma Thomson, Trainee Solicitor, acting as a local agent. Ms Thomson was accompanied by Mr and Mrs Hunt, directors and owners of Plainstones Limited. The Respondents were not present. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and notice of the CMD given to the Respondents, and that it was appropriate to continue with the CMD in the absence of the Respondents in terms of Rule 29.

Ms Thomson moved for an eviction order, citing grounds 6, 12 and 14. Mr and Mrs Hunt referred to abusive WhatsApp voice messages received from the Respondent, Mr Horne, which were available to listen to on Mr Hunt's phone. Mrs Hunt referred to her affidavit whereby her experience in regard to holiday lettings was detailed. Mrs Hunt also referred to an environmental health notice served on the Respondent, Mr Horne, in respect of contamination caused by dog fouling at the Property.

Ms Thomson informed the Tribunal that the arrears of rent now amounted to £8050. The rent is £950 per month, and rent has been outstanding since February 2019, when £500 rent was paid. Since then, no further payment of rent has been made.

Responding to questions from the Tribunal, Mr and Mrs Hunt said they were unaware of whether any relevant benefits were in payment to the Respondents. They thought it unlikely as Mr Horne had claimed to be earning over £150,000 per year when the tenancy was put in place. As far as Mr and Mrs Hunt are aware, the Respondent, Mrs Horne, has not lived in the Property.

Findings in Fact

1. The parties entered into a private residential tenancy commencing on 1st July 2018 in respect of the Property with an agreed monthly rent of £950.
2. The Respondents have been in arrears of rent for three or more consecutive months.
3. At the date of the Case Management Discussion, the Respondents are in arrears of rent by an amount greater than the amount payable as one month's rent.
4. Arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Reasons for Decision

Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day of three or more consecutive months; and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal is satisfied that ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. In terms of section 51(1) of the Act, the Tribunal must issue an eviction order if it finds that one of the eviction grounds named in schedule 3 applies.

In the circumstance, the Tribunal did not consider grounds 6 and 14.

Decision

An eviction order is granted against the Respondents in respect 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.

Helen Forbes

Legal Member/Chair

8th October 2019

Date