



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

Reference number: FTS/HPC/EV/19/2230

Property at 5/7 Roseburn Street, Edinburgh

Parties:

Solenglen Ltd, a company incorporated by the Companies Acts and having their place of business at 90 Mitchell Street, Glasgow (“the Applicant”)

Wesley Robinson, residing at 5/7 Roseburn Street, Edinburgh (“The Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Background

The Applicant sought recovery of possession of the Property in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“The 2016 Act”). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a notice to leave and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

Case Management Discussion

A case management discussion took place before the Tribunal at 2.00pm on 5 November 2019 at the George House, George Street, Glasgow. The Applicant was

represented by John Logan. Miranda Clappison and Richard Gracie, two of the tenants under the lease, also attended. There was no appearance by or on behalf of Wesley Robinson, the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Rented Tenancy Agreement for the Property on 05/01/2019. There were three other tenants on the lease, each with their own share of apportioned rent set out in clause 8 of the lease.
2. One of the tenants, Finlay McMillan voluntarily vacated the property some months ago removing his possessions and surrendering his key to the applicant.
3. The respondent agreed to pay rental of £625 per calendar month to the applicant. The respondent had an earlier tenancy agreement with the applicant in which rental arrears of £1,652 had accumulated. Between 05/01/2019 and 01/11/2019 the respondent failed to make full payments of rental so that each month arrears of rental increased. By 01/11/2019 the respondent owed the applicant £6,485.00 in unpaid rental.
4. At the date of application, there were arrears of rental totalling £3,860. At today's date there are arrears of rental totalling £6,485.00
5. Notice of the date of this hearing was served on the Respondent by sheriff officers on 11 September 2019.
6. Clause 24 of The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property. A notice to leave and a notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 were timeously served on the respondent.
7. An Application was made to the Tribunal on 16/07/2019. The applicant sought recovery of possession of the Property from Wesley Robinson because the respondent had rent arrears for more than three consecutive months.
8. At the date of service of the notice to leave and at the date of making this Application there was at least 3 months' rent lawfully due in arrears. The basis

for possession set out in ground 12 of schedule 3 to the 2016 Act are established.

9. The application was originally raised against the respondent and three others. Finlay McMillan has now returned the keys to the Landlord and vacated the property. The applicant no longer requires an order against him. Miranda Clappison and Richard Gracie have not breached the terms of their lease. The landlord does not seek an order against them. The application is dismissed against Miranda Clappison, Finlay McMillan and Richard Gracie.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property against Wesley Robinson only in terms of Section 51(1) of the 2016 Act. At the date of application three months rent was due. At today's date more than three months rent is due. The basis for possession set out in ground 12 of schedule 3 to the 2016 Act is established. Ground 12 is a "mandatory" ground. For these reasons, the Tribunal determined to grant an Order for possession. The notice to leave has been served on the Respondent and has provided the requisite period of notice. This Application has been made within a period of 6 months after the service of the notice to leave.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession against Wesley Robinson

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.

Paul Doyle

Legal Member

5 November 2019