



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2580

Re: Property at 11/2 Prestonfield Crescent, Edinburgh, EH16 5EN (“the Property”)

Parties:

Mr Behnam Anisi, 3 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Applicant”)

Mr Jason Froude, 11/2 Prestonfield Crescent, Edinburgh, EH16 5EN (“the Respondent”)

Tribunal Members:

Eleanor Mannion (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for possession be granted.

1. A Hearing took place on the 14th November 2019. The Applicant was in attendance and represented by Ms Stewart of McEwan Fraser Legal. The Respondent was not in attendance and had not responded to the application.
2. The application made by the Applicant on the 12th August 2019 was one for possession, citing Ground 4 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) as the basis for this application. The Applicant set out that he required to live in the property due to a change in personal circumstances which meant his current residence was over crowded.
3. On the 29th October 2019, the Applicant sought to amend his application under Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”), introducing a further basis for eviction, namely Ground 12 of the Act. This application was copied to the Respondent. The amendment stated that the Respondent failed to pay the rent due and owing for the months of June, July, August,

September and October 2019 and that £3,850 was outstanding. The monthly rental payment is £770.

4. A further amendment application was made orally at the outset of the hearing alleging that the Respondent failed to make a rental payment for November 2019. Notice of this oral application was not provided to the Respondent in advance of today's hearing.
5. Ms Stewart indicated that the Applicant was seeking eviction based on Ground 12, namely rent arrears, only.
6. She submitted that the tenancy was quite a short tenancy due to the personal circumstances of the Applicant and that a valid Notice to Leave was served on the Respondent. The Respondent agreed with the Applicant that he would vacate the property on or around the 14th August 2019 but this did not take place. The Respondent remains in the property and the Tribunal was advised that he has changed the locks.
7. The Respondent is living in the property by himself. He is working and has a joinery business. The Applicant is not aware of the Respondent being in receipt of any benefits. The Tribunal was advised that the Respondent has not indicated why he has failed to pay his rent.
8. The Tribunal consents to the amendment of the 29th October 2019, to include Ground 12 rent arrears as a basis for the eviction application. The Tribunal refuses the oral application to amend made at today's hearing, 14th November 2019, as the Respondent has not had fair notice of this application. Further, as the November rental payment is due today, 14th November, the Respondent has until 11.59pm to make that payment.
9. Having considered the paperwork lodged and the submissions made by Ms Stewart, the Tribunal was content that Ground 12 of the Act was satisfied, as the Respondent has been in rent arrears for three or more months, that the rent arrears began in June 2019, that this application was made on the 12th August 2019 when two months' rent was outstanding and as at the date of the hearing, the rent is in arrears for three or more months.

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.

Eleanor Mannion

Chair

14/11/19

Date