



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/23/0547

Re: Property at Flat 12 Park View, 64 Dean Street, Kilmarnock, KA3 1AG (“the Property”)

Parties:

Mr Duncan Vaux, 250 Myton Road, Warwick, CV34 6PT (“the Applicant”)

Mr Cameron Campbell, Miss Lauren Brodie, Flat 12, 64 Dean Street, Kilmarnock, KA3 1AG; Flat 12 Park View, 64 Dean Street, Kilmarnock, KA3 1AG (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for Eviction be granted in favour of the Applicant

Background

1. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant seeks an eviction order.
2. A copy of the application was served on the Respondent on 24 March 2023 by Sheriff Officers. The Respondent was advised that a Case Management Hearing (“CMD”) would take place by teleconference call on 27 April 2023 at 2pm.

3. The Applicant lodged with the Tribunal the following documentation;-
 - Private Tenancy Agreement dated 24 July 2022 with a start date of 26 July 2022
 - Notice to Leave dated 16 January 2023 along with proof of service
 - Section 11 Notice and e-mail to Council dated 17 February 2023
 - Arrears rent account
 - Copies of e-mails exchanged between the parties which included evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020

The Case Management Discussion (CMD)

4. The CMD took place by teleconference. The Applicant was represented by Mrs Leslie Ann Barclay of Happy Lets Limited who are the Letting Agents in respect of the Property. The Respondent was not present and was not represented.
5. No written representations had been received by the Tribunal from the Respondent.
6. The CMD was conjoined with an application for a payment order in relation to rent arrears under reference CV/23/0551..At the date of the CMD the rent arrears amounted to £3758.02.
7. Mrs Barclay sought an order for Eviction. She informed the Tribunal that she had required to seek an order from the Tribunal allowing Right of Entry to the Property and this was exercised along with Sheriff Officers on 20 March 2023. The Respondent still occupies the Property .On that date the First Respondent had been extremely abusive and had not allowed the Sheriff Officers entry to the Property or Mrs Barclay's colleague. He had allowed only her entry. When she inspected the Property she discovered that the couple had a baby also resident with them which had come as a shock as the Respondent had not mentioned this .The Respondent on that date had made promises to contact Mrs Barclay to discuss the applications raised before the Tribunal but had failed to do so.
8. Previously the First Named Respondent had made threats towards a gas engineer.
9. The relationship between parties was described as being fraught.
10. Mrs Barclay said that she had sought an application for direct payments of rent in relation to both Respondents from the Benefits Agency. She had been advised that the First Respondent was not claiming any benefits. A Housing Benefit payment of £33.49 was being paid in relation to the Second Named Respondent. Two payments have been received in this amount thus far. Meantime rent arrears continue to accrue.
11. The Respondent is refusing to enter into any dialogue with her. .
12. Mrs Barclay informed the Tribunal that the Applicant has his own mortgage to pay in respect of the Property. He had also encountered financial difficulties during the pandemic and had been furloughed. He was in contact with her frequently enquiring if any further payments had been received.
13. The Tribunal enquired regarding the suggestion in some of the communications between parties regarding whether rent had been withheld

by the Respondent due to repairs issues and whether there were any repairs outstanding. Mrs Barclay said that this had been the reason that she had required right of entry to make sure that repairs had been carried out as the Respondent was claiming that repairs which had been carried out had not, in fact, been. She confirmed from her inspection that all repairs had been carried out and that this had been a delaying tactic by the Respondent not to pay rent as the matters raised were trivial and had been attended to as soon as the issues were reported.

Findings in Fact

14. The Applicant is the landlord of the Property; the Respondent is the tenant of the Property in terms of a private tenancy agreement entered into between the parties.
15. The contractual monthly rental due in terms of the tenancy agreement is £425 per calendar month.
16. The Respondent fell into arrears of rent.
17. A Notice to Leave dated 16 January 2023 was served on the Respondent.
18. The Notice to Leave intimated that the Applicant was seeking recovery and possession of the Property on the ground that the Respondent was in arrears of rent over 3 consecutive months in respect of the Property (Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016).
19. The Notice to Leave intimated that proceedings for removal would not be raised before 16 February 2023.
20. The Respondent remains in occupation.
21. The Applicant presented an application to the Tribunal on 21 February 2023 seeking an Order of removal of the Respondent from the Property.
22. A Notice in terms of s 11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the relevant local authority.
23. At that time Ground 12 was established as the Respondent was in arrears of rent of a sum at least equal to one month's worth of rent and had been so in arrears for a period of at least three months.
24. Ground 12 remains established as at today's date.
25. The Applicant has complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and The Homelessness (etc)(Scotland) Act 2003
26. It is reasonable to grant the order for eviction.

Reasons for Decision

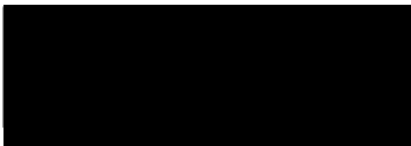
27. Whilst the Respondent did not participate in the CMD, the Tribunal required to consider the application before it. In doing so the Tribunal noted that a Notice to Leave had been served in proper form, that proceedings had been raised only after the period of Notice had expired; That the necessary intimation had been provided to the Local Authority in terms of the Homelessness Etc. (Scotland) Act 2003 and that the requirements of Ground 12 of Schedule 3 of the 2016 Act were met, thus enabling the Tribunal to consider the application for eviction.
28. In the circumstances it appeared that a factual and a legal basis had been made out for an order for eviction to be granted. Given that there was no

appearance by or on behalf of the Respondent, there was no information before the Tribunal to enable it to conclude otherwise than that granting an order for eviction was reasonable and appropriate in the circumstances.

29. The Tribunal also took account of the personal circumstances of the Applicant and the fact that he had a mortgage to pay in respect of the Property and that he had been left in a prejudiced position due to the Respondent's failure to pay rent .Furthermore no payments of rent have been made since 28 July 2022.The Applicant has attempted to engage with the Respondent and has pointed the Respondent in the direction of seeking appropriate advice which the Respondent has failed to do .In all the circumstances the Tribunal concluded that the Order sought was reasonable.

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.



Yvonne McKenna

Legal Member/Chair

27 April 2023

Date