



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/22/2759

Re: Property at 38 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Property”)

Parties:

Places for People Scotland in Association with Castle Rock Edinvar Housing Association, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Paul Forbes, 38 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Respondent”)

Tribunal Members:

Richard Mill (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 that an eviction order be granted against the respondent

Introduction

These are linked applications between the same parties. The first application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the applications and of the initial Case Management Discussions (CMDs) in both applications were effected upon the respondent by Sheriff Officers on 20 October 2022.

A CMD in both cases took place by teleconference on 28 November 2022 at 10.00 am. The applicant was represented by Miss Melissa Wilson of Messrs Patten & Prentice,

Solicitors. The respondent failed to participate in the hearing. There was no known barrier to him doing so.

Findings and Reasons

The property is 38 Tudsbery Avenue, Edinburgh EH16 4GX.

The applicant is Places for People Scotland who is the heritable proprietor and registered landlord. The respondent is Mr Paul Forbes who is the tenant.

The parties entered into a private residential tenancy which commenced on 22 November 2019. The agreed rent in terms of the written lease was £668 per month. Two notices increasing the rent have been served. The rent was increased to £682.03 with effect from 1 April 2021 and to £708.63 from 1 June 2022.

The current eviction proceedings are based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, which requires the respondent to be in rent arrears over three consecutive months. The current civil proceedings before the Tribunal relate to a Payment Order application in which they seek to recover the arrears of rent.

The applications are supported by an up to date detailed rent statement which reflects the arrears of rent relied upon. The Tribunal found this a credible and reliable document and attached weight to it.

Throughout the time which the applications have been pending the arrears have increased. As at the date of hearing, the rent outstanding totals £16,651.20 though no Rule 14A amendment application was made to increase the sum sought by way of recovery.

The applicant is entitled to recover arrears of rent due under and in terms of the written lease between the parties. The Tribunal therefore granted a Payment Order against the respondent in the sum of £15,325.31 being the sum sought in the civil proceedings application.

Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary.

The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 13 May 2022. It states an application will not be submitted to the Tribunal for an eviction before 12 June 2022. On the face of it, the Notice is one day short of the requirements set out in Section 62 of the Act, which requires 48 hours to be added on to allow for service and an additional period of one day. The period of 48 hours for deemed service is however rebuttable and the Tribunal accepted that the Notice to Leave was served personally upon the respondent on the

day that it is dated, namely 13 May 2022. This is evidenced by a Sheriff Officer's execution.

The Tribunal was satisfied that more than three consecutive months of rent was outstanding as at the date of the Notice to Leave and remains unpaid by the respondent as at the date of hearing. This establishes ground 12. The Tribunal proceeded to consider the issue of reasonableness.

The respondent is 36 years of age. It is known that he has an adult step daughter who has been resident at the property at times. He is known to be in fulltime employment earning over £23,000 per annum. The respondent has no known disabilities or other vulnerabilities.

There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicants. It is likely that in the event of an eviction order being granted that the local authority will make alternative accommodation available to the respondent.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020.

The applicant has provided documentary evidence of compliance with the pre-action requirements immediately preceding the initiation of the eviction application to the Tribunal. Further oral submissions were provided by the applicant's representative regarding additional earlier communications by her firm and by the applicant. The Tribunal accepted these as credible and reliable.

In all of the circumstances the Tribunal determined that it was reasonable to grant the eviction order sought by the applicant.

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.

R Mill

28 November 2022

Legal Member/Chair

Date

