



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2713

Re: Property at 16D Ballantrae Road, Dundee, DD4 8PN (“the Property”)

Parties:

Mr George McKenzie, 21 Piperdam Drive, Fowlis, Dundee, DD2 5LY (“the Applicant”)

Mr Christopher Cullen, 16D Ballantrae Road, Dundee, DD4 8PN (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made against the Respondent for payment to the Applicant of the sum of Four Thousand Four Hundred and Eighty Pounds (£4,880)

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 Case Management Discussions (CMDs) in both applications were effected upon the respondent by Sheriff Officers on 23 November 2022.

A CMD in both cases took place by teleconference on 6 January 2023 at 10.00 am.

The Applicant was represented by Mr Michael Brown, solicitor. The respondent failed to participate in the hearing

Findings and Reasons

The property is 16D Ballantrae Road, Dundee, DD4 8PN

The applicant is Mr George McKenzie who is the heritable proprietor of the property and the registered landlord. The respondent is Mr Christopher Cullen who is the tenant.

The parties entered into a private residential tenancy which commenced on 1 August 2021. The monthly rent stipulated in the tenancy agreement was £480 per month. Throughout the duration of the tenancy the respondent has fallen into arrears of rent.

The arrears, as at the date of application being made on 3 August 2022, amounted to £4,880. This is evidenced in terms of a detailed rent statement produced by the applicant. The Tribunal found this document to be a credible and reliable source of evidence and attached weight to it. 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 £ 4,880.

The eviction proceedings are based upon these arrears of rent and the ground relied upon is ground 12 contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondents were in rent arrears over three consecutive months.

The Notice to Leave is dated 18 June 2022. It states that an application will not be submitted to the Tribunal for an eviction before 23 July 2022. Sufficient notice was provided comprising of the necessary 28 days, together with the additional period of 48 hours for deemed service and an additional day at the end of the notice period, all as provided for in terms of section 62 of the Act. There is evidence of the recorded delivery posting and of receipt the item by the respondent on 20 June 2022.

The Tribunal was satisfied that more than three consecutive months of rent remains unpaid by the respondent. This establishes ground 12. The Tribunal proceeded to consider the issue of reasonableness.

The respondent is a young man. He is known to be employed. He has no known dependents and does not have any 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 applicant. In the event of

an eviction order being granted that the local authority has a statutory duty to make alternative accommodation available to the respondent.

The Rent Arrears Pre-Action Requirements have not been fully complied with by the applicant though it is evidenced that he made contact with the respondent regarding the arrears to seek to discuss and resolve the issue.

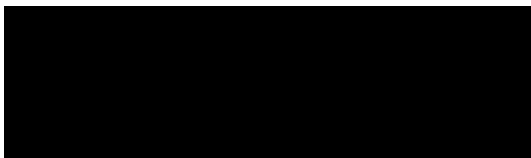
It is unreasonable to require the applicant to continue to allow the respondent a right to occupy the property when he is not paying rent.

The respondent is being prosecuted in respect of a serious assault upon the applicant which took place on 18 October 2022. The applicant was seriously injured and was hospitalised between 18 and 28 October 2022. Medical evidence has been provided to support this. The respondent is being prosecuted and is subject to bail conditions which prohibit him entering the let property. The landlord / tenant relationship has broken down irretrievably.

In all of the circumstances the Tribunal had no hesitation in determining 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.



Legal Member/Chair

6 January 2023

Date