



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/19/3697

Re: Property at 12 TL Dundonald Street, Dundee, DD3 7PW (“the Property”)

Parties:

Mr Richard Bailey, 6 Castle Gogar Rigg, Edinburgh, Midlothian, EH12 6FP (“the Applicant”)

Ms Deborah Young, 12 TL Dundonald Street, Dundee, DD3 7PW (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondent for possession of the Property at 12 TL Dundonald Street, Dundee, DD3 7PW under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 15 November 2019 the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order to evict the Respondent from the Property due to rent arrears.

2. On 5 March 2020, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

3. A Case Management Discussion (“CMD”) had originally been assigned to proceed on 26 March 2020. Intimation of this had been made on the Respondent by Sheriff Officers on 25 February 2020. This CMD was discharged due to the COVID-19 pandemic. Whilst a further CMD was assigned to proceed on 10 July 2020, that was continued as the Tribunal had no proof the Respondent had received notification of this CMD in terms of Rule 24 of the Regulations. A new CMD was assigned to proceed on 24 August 2020.

4. On 30 July 2020, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations. The Tribunal also advised parties on 30 July 2020 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 24 August 2020. This paperwork was served on the Respondent by Michael Gallagher, Sheriff Officer, Livingston on 30 July 2020 and the certificate of execution of service was received by the Tribunal administration.

5. The Respondent did not make any written representations in response.

Case Management Discussion

6. The adjourned CMD proceeded by way of teleconference call. Mr Harris from Jackson Boyd, Solicitors, appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The CMD also considered an application for payment under case reference FTS/ HPC/19/3699 in terms of which the Applicant sought payment of rent arrears from the Respondent. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD for both applications in her absence.

7. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 6 September 2018, various rent statements which the Applicant had lodged for each CMD that had previously been assigned, a Notice to Leave dated 3 October 2019 with accompanying email to the Respondent, a Recoded Delivery slip dated 21 November 2019 and proof of delivery dated 22 November 2019 with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to the Dundee City Council dated 21 November 2019.

8. Mr Harris moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”).

9. At the point of lodging the application the Tribunal had noted the arrears were £2040 and that the rent statements lodged showed that no rent, which was £340 per month in terms of Clause 8 of the tenancy agreement, had been paid since 1 May 2019. Mr Harris explained the arrears were currently £5100 with reference to the up to date rent statement. There was no suggestion these had accrued due to a delay or failure in benefit.

10. The Tribunal also noted the Notice to Leave under Section 50(1) and Grounds 12 of Schedule 3 of the 2016 Act dated 3 October 2019 addressed to the Respondent and sent to the Respondent by email on 3 October 2019. The Tribunal noted that in terms of Clause 4 of the tenancy agreement parties had agreed that communication including notices could be made by email. To the best of the Applicant’s knowledge the Respondent still lived at the Property. She had not handed the keys back. The Tribunal noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the Dundee City Council on 21 November 2019.

Findings in Fact

11. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement starting on 6 September 2018 in relation to the Property. In terms of Clause 8 of that tenancy agreement, the Respondent agreed to pay the Applicant a calendar monthly rent of £340 due on 6th of each month.

12. The Respondent last paid rent of £340 on 1 May 2019. She has paid no rent since then. The arrears as at 15 November 2019, the date of application, were £2040. Current arrears are £5100. The Respondent is in breach of Clause 8 of the tenancy agreement.

13. The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.

14. On 3 October 2019, the Applicant served a Notice to Leave on the Respondent by sending it to her by email requesting that she remove from the Property by 4 November 2019. Such service was permitted in terms of Clause 4 of the tenancy agreement.

15. The Respondent has not returned the keys to the Property.

16. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Dundee City Council on 21 November 2019.

17. The Applicant provided evidence of non-payment of rent in the form of the rent statements. The Tribunal was satisfied on the basis of the rent statement and the supporting oral submissions made on behalf of the Applicant that the Respondent had been in arrears of rent for over three consecutive months and was in excess of over a month's arrears both at the time the Notice to Leave was served and currently. The Respondent had not paid any rent for over 15 months. There was no evidence that the arrears had accrued due to a delay or failure in payment of any benefit. The Respondent is in breach of Clause 8 of the tenancy agreement. In the circumstances, the Notice to Leave having been served and the appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 also having been served, the Applicant is entitled to repossess the Property.

Decision

18. The Tribunal granted an order for repossession of the Property.

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.

S Evans

25 August 2020

Legal Member

Date