



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/19/3834

Re: Property at 5 Manor Drive, Drumpellier Farm, Coatbridge, ML5 1RR (“the Property”)

Parties:

Mr Steve Graham, 1 Boclair Brae, Glasgow, G61 2AE (“the Applicant”)

Mr Matthew Bainbridge, formerly residing at 5 Manor Drive, Drumpellier Farm, Coatbridge, ML5 1RR and whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 29th November 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave with execution of service, section 11 notice with proof of service, and correspondence from the Respondent confirming he had left the Property and was residing elsewhere.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had e-mailed the Tribunal in advance of the Case Management Discussion of 10th March 2020 with written representations, and advised that he would be represented by Stephen Swiffen.

A Case Management Discussion was held on 10th March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Miss Diamond and Miss Haverstock, letting agents. The Respondent did not appear, but was represented by Mr Swiffen.

This application proceeds upon ground 10 contained in Schedule 3 of the *Private Housing (Tenancies) (Scotland) Act 2016*, in respect that the Tenant is not occupying the Let Property as his only or principal home and has abandoned it.

Mr Swiffen explained that the Respondent considered that he had left the Property, and that his obligations as tenant were at an end. The Respondent's mother, who resided at the Property with him, remained in occupation of the Property and refused to return the keys.

The Respondent considered that his tenancy of the Property was at an end, and that the Applicant had entered into a tenancy agreement with his mother which had not been put in writing. His main concern was the return of his tenancy deposit, and he considered that the Applicant needed to deal with his mother's continued occupation of the Property in a separate application against her.

The Applicant's position was that the Respondent was sole tenant in terms of the tenancy agreement. The Respondent's mother was not a joint tenant of the Property. The Applicant was notified by the Respondent that his mother would reside with him at the Property in terms of clause 13 of the lease agreement, and was quite content with that arrangement.

However, as a result of the Respondent's mother's refusal to leave the Property, and the fact that the keys of the Property had not been returned to the Applicant, the Applicant could not resume possession of the Property, and the lease agreement had not been brought to an end.

That being so, the Respondent remained liable for the tenant's obligations under the lease, and the Applicant required to seek an order for eviction against the Respondent and his dependants (including his mother) in order to bring the lease agreement to an end and before taking steps to regain possession.

It became obvious during the discussion with parties, that the Respondent appeared not to appreciate the legal difference between his leaving the Property, and the lease agreement being ended. He also appeared to not appreciate that the deposit issue could not be resolved until the lease agreement had been brought to an end.

Mr Swiffen readily conceded that was the case, and indicated that he wished to discuss these issues with the Respondent, and for the Respondent to take some legal advice on his position and legal rights and obligations in these circumstances.

Miss Diamond and Miss Haverstock objected to a continuation to allow such advice to be taken, due to the delay which would be caused to the Applicant. They explained that they had e-mailed the contact e-mail address given in the lease for the tenant advising that he should seek legal advice. They accepted that these e-mails had been responded to by the Respondent's mother, and they had no confirmation as to whether or not the Respondent had seen them.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a hearing.

The Tribunal considered it to be reasonable to adjourn the Case Management Discussion in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Respondent sought time to take legal advice on his position. The circumstances here were a little unusual, and the Tribunal considered it to be in the interests of justice that he be given the opportunity to obtain such advice.

The Tribunal made it clear to Mr Swiffen that it would allow one adjournment for the purpose of taking legal advice, and would be very unlikely to allow any further adjournments for that purpose.

Mr Swiffen indicated that in the event that after taking advice, the Respondent decided that he would no longer resist the granting of an eviction order, then he would contact the Tribunal to advise it of this.

The Tribunal confirmed with the parties that in the event the Respondent did so, then they would be content for the Tribunal to deal with this matter in their absence, and to proceed to issue an eviction order and written statement of reasons without a hearing.

A continued Case Management Discussion was set for 3rd April 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 15th July 2020 by Tele-Conference. The Applicant did not participate, but was again represented by Miss Diamond, letting agent. The Respondent did not participate, and again was

represented by Mr Swiffen, with whom he remains in contact. The Respondent communicates with the Tribunal by e-mail.

Mr Swiffen advised the Tribunal that he had e-mailed thirty files to it on the afternoon of the day before the Case Management Discussion. The Tribunal made enquiries with its administration, which confirmed it had received these towards the end of the day before, and was currently processing them. The Tribunal's administration forwarded the e-mails to the Tribunal and Miss Diamond, and the Tribunal adjourned for twenty minutes to allow it and Miss Diamond to peruse these items.

On resuming the Case Management Discussion, the Tribunal noted that much of the material was apparently provided to establish various losses and claims which the Respondent's mother and the Respondent felt they had against the Applicant. Some of it related to a claim that the copy lease agreement lodged by the Applicant was not a copy of the lease agreement which the Respondent signed when he entered the lease, and that the Respondent's mother might have been a joint tenant.

Importantly, the material also contained statements from the Respondent, Mr Swiffen and the Respondent's mother. It became clear to the Tribunal from reading these, that both the Respondent and his mother accepted that the lease was coming to an end, both had left the Property and were now residing elsewhere, and that neither intended to take up occupation of the Property again.

It appeared that their purpose in resisting the granting of an eviction order was actually to seek to obtain access to the Property in order to remove the remainder of their possessions, they having already removed some of them in the process of starting to move out.

Due to the lockdown, they had been unable to complete the process of removing their personal items from the Property, and when they returned to do so found that they could not gain access, as the Landlord had by that time assumed they'd left and changed the locks.

The Tribunal explained to Mr Swiffen that if any of himself, the Respondent, and the Respondent's mother wished to make claims against the Applicant in respect of any financial loss, damage, claim for compensation or the like, then any such claims would need to be made in separate applications to the Tribunal and could not be determined in this application.

Similarly, if the Applicant wished to make any further claim in respect of any rent arrears, damage, loss, or reinstatement costs, then he too would need to do so in separate applications to the Tribunal.

The Tribunal explained to Mr Swiffen, and Miss Diamond readily agreed, that the Respondent and his mother were entitled to seek access to the Property for the purpose of collecting their personal possessions after the lease had ended. Miss Diamond was happy to agree on behalf of the Applicant that such access would be given at a time to be arranged between the parties for those personal possessions to be collected.

That being the case, Mr Swiffen indicated and accepted that the Respondent had no basis to seek to resist the granting of an eviction order, and no longer sought to do so.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 10 of Schedule 3 to the Act provides that it is an eviction ground that the tenant is not occupying the let property as the tenant’s home. The Tribunal must find that this ground applies if (a) the let property is not being occupied as the only or principal home of the tenant or a person to whom a sub-tenancy of the let property has been lawfully granted, and (b) the property’s not being so occupied is not attributable to a breach of the landlord’s duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

The Tribunal is satisfied that ground 10 has been established. The tenant and his dependants accept that he is not occupying the Property as his only or principal home, and it is not suggested that that this is due to any breach of the landlord’s duties under the Housing (Scotland) Act 2006. The Respondent and his mother both accept that they have left the Property, reside elsewhere, and do not intend to resume occupation of it.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

15th July 2020

Legal Member/Chair

Date

