



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/21/3105

Re: Property at 11 Faithlie Street, Fraserburgh, AB43 9LJ (“the Property”)

Parties:

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Mrs Grace Taylor, Rabey Villa, Blaweane Road, Sanquhar, DG4 6BS (“the Applicant”) per her agents Trinity Factors, 1, South Mount Street, Aberdeen, AB25 2TN (“the Applicant’s Agents)

Mr Brian James Kerr residing formerly at 11 Faithlie Street, Fraserburgh, AB43 9LJ and now at 42 West Street, Fraserburgh, AB43 9NE. (“the Respondent”)

Tribunal Members:

Karen Moore (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 an Order for eviction and possession of the Property be granted.

Background

1. By application received between 15 and 23 December 2021, (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction in terms of the Ground that the Respondent as the tenant is not occupying the let property as his home. The Application comprised a copy of the private residential tenancy agreement between the Parties, copy Notice to Leave in terms of Ground 10 of Schedule 3 to the Act dated 10 November 2021 together with proof of intimation, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeenshire Council, being the relevant local authority, copy emails from the Applicant’s Agents stating that inspections of the property had been carried out in December 2021 and that the Respondent appeared not to be resident at the Property, copy photographs of the Property appearing to show that the Property was not occupied and rent statement

showing that rent had not been paid since December 2020. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 28 March 2022 at 10.00 by telephone conference.

2. The CMD was intimated to the Parties, intimation to the Respondent being by service on him personally by Sheriff Officer at his current address. The report from the Sheriff Officer stated that the Respondent had advised that he had not resided at the Property for some months and had returned the keys to the Property to the Applicant's Agents.

CMD

3. The CMD took place on 28 March 2022 at 10.00 by telephone. The Applicant did not take part and was represented by Ms. Rachel MacDonell of the Applicant's Agents. The Respondent did not take part and was not represented. He did not submit any written representations.
4. Ms. McDonell confirmed the Order sought and advised that the Respondent appeared to have vacated the Property without formally giving notice to terminate the tenancy agreement. She explained that the Applicant had followed the statutory procedures to seek a termination of the tenancy on the ground that the Respondent no longer occupies the Property. She advised that, as far as she was aware, the keys had not been returned to the Property.

Findings in Fact

5. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Parties at a monthly rent of £450.00;
 - ii) The Respondent no longer occupies the Property but has not terminated the tenancy agreement in terms of the Act and
 - iii) The Respondent has not paid rent to the Applicant in over a year.

Issues for the Tribunal

6. The issues for the Tribunal is to determine if the Application is competent in terms of the Act, if the eviction Ground is established and if it is reasonable to grant the Order on account of those facts.
7. With regard to competence of the Application, the Tribunal was satisfied that it is competent.
8. With regard to the eviction Ground, the Tribunal was satisfied that the Respondent no longer occupies the Property as his home.
9. With regard to the reasonableness aspect of the Application, the Tribunal was satisfied that on account of the facts that the Respondent no longer resides in the Property as his home, it is reasonable to grant the eviction Order.

Decision

10. Having made those findings, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an order for eviction and possession.

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.

K Moore

Legal Member: Karen Moore

Date : 28 March 2022