



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/21/3175

Re: Property at 2 Maryfield Terrace, Dundee, DD4 7AE (“the Property”)

Parties:

Piperdam Ltd, 10 Osprey Avenue, Piperdam, Dundee, DD2 5GB (“the Applicant”)

Mr Ian MacKenzie, 2 Maryfield Terrace, Dundee, DD4 7AE (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (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 be granted against the Respondent

Introduction

This application is under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 17 February 2022.

The CMD took place by teleconference on 1 April 2022 at 10.00 am.

The applicant was represented by Mr Paul Goodman, property manager of Rent Locally, letting agency. The respondent failed to participate in the teleconference hearing. There was no known barrier to him doing so.

Findings and Reasons

The property is 2 Maryfield Terrace, Dundee DD4 7AE.

The applicant is Piperdam Ltd. Mr Michael Begg is the director of the company. Mr Begg owned the property as an individual until it was transferred to the company on 30 April 2021.

The landlords named on the lease were both Mr Michael Begg and Mr Danny Bourlay. The tenant is Mr Iain MacKenzie who is the respondent in these proceedings.

A private residential tenancy agreement was created which commenced on 31 October 2019. The rent was stipulated at £500 per month.

The respondent has fallen into arrears of rent. Rent arrears have been ongoing for some time. A former action for eviction based on rent arrears was initiated before the Tribunal under reference FTS/PHC/EV/20/0286. A CMD took place in that process on 26 August 2020. Those proceedings were abandoned due to an undertaking given then by the respondent regarding repayment of the arrears of rent.

The current arrears of rent are evidenced by way of a rent ledger disclosing the arrears throughout the history of the lease. At the date that the Notice to Leave was served and as at the date of the hearing the respondent is in three months' rent arrears or more. As at the date of the hearing the arrears outstanding amount to £4,120.04.

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

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. Additionally the notice periods were extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and was one of 6 months at the time that the Notice to Leave was served.

The Notice to Leave is evidenced to have been issued to the respondent by email on 4 June 2021. The Notice fully discloses the basis upon which a proposed eviction would be based, namely the rent arrears and full details were given. The Notice to Leave specified the end of the Notice period as 10 December 2021. This is more than the minimum required period in accordance with section 62 of the Act. The Notice to Leave is valid.

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

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 Tribunal was satisfied that the respondent has been signposted to sources that could help him with financial advice and debt management and that reasonable efforts had been made to agree a repayment plan.

The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).

The applicant is a single man with no dependents. He is known to have a gambling addiction though has no physical health problems. He has previously entered into a repayment agreement but has defaulted on it.

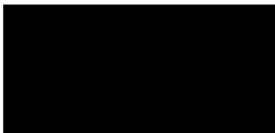
The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondent in the absence of him making rental payments, the last of which was made in October 2021.

The Tribunal was satisfied that intimation of the eviction application has been made to the Local Authority. The Tribunal was informed that the respondent has had a meeting with the landlord's agents in December 2021 and subsequently with Dundee City Council Homefinders and that it is most likely that the offer of alternate accommodation will be made upon the Tribunal making an Eviction Order. He has advised the applicant's letting agent that he has been offered another property already though no further details are known about this and the respondent is known not to have vacated the property.

The Tribunal found it was reasonable to grant the eviction 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.



Legal Member/Chair

1 April 2022

Date