



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/22/0069

Re: Property at 14 Bathgate Road, Armadale, West Lothian, EH48 2PE (“the Property”)

Parties:

Mr Mark Whelan, 111 Crawhill Drive, Bargeddie, G69 7FL (“the Applicant”)

Mr Cumali Deniz, sometime 14 Bathgate Road, Armadale, West Lothian EH48 2PE, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and granted an Order for Possession of the Property.

Background

By application, dated 10 January 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 10 of Schedule 3 to the Act, namely that the let property is not being occupied as the only or principal home of the tenant or of a person to whom a sub-tenancy of the let property has been lawfully granted and the property’s not being so occupied is not attributable to a breach of the landlord’s duties under Chapter 4 of Part I of the Housing (Scotland) Act 2006.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 8 July 2019 at a rent of £450 per month, a Rent Statement showing that no rent had been paid since August 2021, and copies of emails from two neighbours, both of whom stated that they had not seen the Respondent for some weeks and that he had told them he was returning abroad. The Applicant also provided the Tribunal with a copy of an email of 9 November 2021 from the letting agents to the Respondent, advising him of his rent arrears and signposting

him to organisations that might be able to provide help and support. A Timeline provided by the Applicant's letting agents indicated that, In October 2021, they had spoken with the Respondent, who had said that he had COVID-19 and that he had been present when they visited the Property on 21 October, but all attempts to contact him since then had been unsuccessful. On 24 November, they had contacted his place of business, a café in Bathgate, and had been informed that it was under new ownership. The person named on the tenancy application as next-of-kin had also stated that she had not spoken to the Respondent for six months, but she was aware that he was going back to Turkey.

On 19 April 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion. Service on the Respondent was by means of advertisement on the Chamber website between 19 April 2022 and 31 May 2022, as his whereabouts are unknown. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 31 May 2022. The Applicant was represented by Ms Jodie McAdam of Castlebrae Sales and Lettings, Bathgate. The Respondent was not present or represented. The Applicant's representative asked the Tribunal to issue an Eviction Order without a Hearing. She advised the Tribunal that the Respondent had enquired on 30 August 2021 about ending the tenancy and had been told that all that was required was that he give 28 days' notice. He had not given notice after that, and the rent arrears were now £4,185. The letting agents had been calling at the Property regularly, but there had been no sign of the Respondent having been back there, as, by looking through the windows, it remained in the same condition as was observed on earlier visits. She commented that potatoes lying on the draining board, seen through the windows at an earlier inspection had now sprouted. She confirmed that the Respondent had lived on his own at the Property.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Ground 10 of Schedule 3 to the Act, as amended by the Coronavirus (Scotland) Act 2020 provides it is an Eviction Ground that the tenant is not occupying the let property as the tenant's home and that the Tribunal must find that Ground 10 applies if the let property is not being occupied as the only or principal home of the tenant, or of a person to whom a sub-tenancy of the let property has been lawfully granted, and the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of the Housing (Scotland) Act 2006, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts.

The Tribunal was satisfied that the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been met by the Applicant.

The Tribunal was also satisfied that the Applicant had taken considerable steps to try to ascertain that the Respondent was no longer living in the Property. All the indications were that he had left the country. He had indicated this to the letting agents

on 30 August 2021 and his neighbours on both sides had stated that he had told them he was returning to Turkey. In addition, he no longer owned his business in Bathgate, and his next-of-kin contact had confirmed that she understood he was returning to Turkey. The Tribunal was satisfied that the Respondent was no longer occupying the Property.

Having considered all the evidence and information provided by the Applicant and his letting agents, the Tribunal determined that it was reasonable to issue an Eviction Order.

The Decision of the Tribunal was unanimous.

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.

George Clark

Legal Member/Chair

31 May 2022
Date