



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/4331

Re: Property at 49 Barry Road, Kirkcaldy, KY2 6JD (“the Property”)

Parties:

Mr Mark Connelly, 23 Brownhill View, Wishaw, ML2 9QJ (“the Applicant”)

Geraldine Carolan, , formerly residing at 49 Barry Road, Kirkcaldy, KY2 6JD and whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

James Bauld (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted

Background

1. By application dated 5 December 2022 the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 12 January 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion (CMD) was set to take place on 5 May 2023 and appropriate intimation of that hearing was given to both parties . Service on the respondent was effected by way of advertisement on the tribunal website.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 5 May 2023 via telephone case conference. The applicant was personally present in the telephone case conference and was represented by his letting agent, Ms Gillian Inglis from Belvoir Kirkcaldy, 9 Whytecausway, Kirkcaldy KY1 1XF. The Respondent did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant and his representative with regard to the application.
7. They confirmed that they wished the order for eviction to be made.

Findings in Fact

8. The Applicant is the registered owner of the property .
9. The Applicant and the Respondent , along with Mr Edward Barry, as respectively the landlord and tenants entered into a tenancy of the property which commenced on 2 February 2018.
10. The tenancy was a private residential tenancy in terms of the Act.
11. Mr Edward Barry died in early 2022 and the respondent became sole tenant by operation of section 66 of the Act.
12. The agreed monthly rental was £765.
13. On 6 October 2022 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and Notice became effective on 6 November 2022.
14. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
15. The notice was correctly drafted and gave appropriate periods of notice as required by law.
16. The notice set out various grounds contained within schedule 3 of the Act, including grounds 10 (that the tenant was not occupying the property) and

ground 12 (that the tenant had been in arrears of rent for three or more consecutive months)

17. Arrears had started to accrue in February 2022 and at the date of the lodging of the application arrears amounted to £8,415.00.
18. The amount of arrears at the date of the CMD was £12,240 .
19. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
20. The basis for the order for possession on ground 12 was thus established.
21. The tenant had not been in occupation of the property for over ten months having vacated it upon the death of her partner.
22. The basis for the order for possession on ground 10 was thus established.

Reasons for Decision

23. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
24. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since February 2022 the respondent has failed to pay the rent as it fell due and significant arrears have accrued.
25. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significant. The ground for eviction based on rent arrears was accordingly established.
26. The tribunal accepted the unchallenged evidence of the applicant that the respondent was no longer occupying the property. The ground for eviction based on the tenant's failure to occupy was accordingly established.
27. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on grounds 10 and 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
28. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

29. In this case the tribunal finds that it is reasonable to grant the order.
30. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. It was also clear from the evidence that the tenant has already left the house and is now living elsewhere and does not intend to return to the property and in all the circumstances the tribunal decided that it was reasonable to grant the order sought.
31. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

J. Bauld

Legal Member/Chair

Date: 05/05/2023