



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/23/0266

Re: Property at 10/1 Southhouse Square, Edinburgh, EH17 8DP (“the Property”)

Parties:

Mr David McMenemy, 12 Douglas Road, Leslie, KY6 3JZ (“the Applicant”)

Mr Tor Sagen, Cherish Eshelman, UNKNOWN, UNKNOWN; 19 (2F1) Rankeillor Street, Edinburgh, EH8 9JA (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an eviction order against the Respondents.

- Background

By application dated 26 January 2023 (the Application), the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). With the Application, the Applicant, lodged the following:

- 1) Lease dated 26 May 2022;
- 2) Copy Notice to Leave dated 19 December 2022 along with copy intimation email;
- 3) Section 11 Notice;
- 4) Copy emails dated 10 January 2023 and 11 January 2023 from neighbouring residents to the Property;
- 5) Trace report dated 28 February 2023
- 6) Copy Confirmation of refusal/lack of access dated 10 April 2023 under reference FTS/HPC/RE/23/0178 relative to the Property.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 14 June 2023 to be heard by way of conference call to call with other applications relative to the Property.

Prior to the CMD, by emails dated 22 and 23 May 2023 the second named Respondent lodged written representations including copy messages and emails about her vacating the Property. Service of the Application was made on the second named Respondent by way of sheriff officers. In relation to the first named Respondent, an application for service by way of advertisement was made and granted and a certificate of such service was provided by Tribunal administration for the CMD. Despite this, no written response was received from or on behalf of the first named Respondent.

- The Case Management Discussion

The Applicant appeared and represented himself. The Second named Respondent appeared and represented herself. The First named Respondent did not appear and was not represented. Notwithstanding, the Tribunal was of the view that proper intimation of the Application had been made and that the first named Respondent ought to be aware of the CMD and his requirement to attend and that if he failed to do so, the Application could be dealt with in his absence.

The Applicant confirmed that he was seeking an Eviction Order in terms of Ground 10 of schedule 3 of the 2016 Act. That is, that neither Respondent was occupying the Property as their only or principal home. He referred to the information he had lodged to support the Application including the emails from neighbouring residents who confirmed that no one had been seen at the Property from on or about mid-December 2023. He referred to the trace report from Nationwide Tracing dated 28 February 2023 that confirmed that there "...were no current residential details listed for.." the first named Respondent. He also stated that he had been issuing regular rent statements and reminders as well as visiting the Property periodically and there had been no response and no signs of occupation at the Property. No rent had been paid since the "end of November 2022" and the last contact he had with the first named Respondent was by text on 12 January 2023. He also stated that he was aware the second named Respondent moved out of the Property on or around the end of August 2022 and now resided elsewhere in Edinburgh. In one of the applications that called alongside the Application (FTS/HPC/EV/23/0264) there was mention of a possible occupant at the Property, a Martin Leyfield. The Applicant indicated that there had been a discussion about a new lease between the first named Respondent and this Mr Leyfield, but it had not progressed as he had required referencing documentation to be submitted before he would consider the grant of a new lease. That had not been provided by either the first named Respondent or Mr Leyfield and no new lease, assignation or consent to sub-letting had been agreed to by the Applicant.

The second named Respondent confirmed she had removed from the Property on or around 15 August 2022 and returned her keys to the Applicant on or around 30 August 2022. This followed a break down in her relationship with the first named Respondent. She had also included with her written representations a copy of an email sent to the Applicant dated 30 August 2022 confirming same and that she had

required to move out for her “own safety”. In relation to the first named Respondent, she indicated that she thought he was “no longer in the country”. She indicated that she had blocked him from contacting her through social media and had no direct contact with him from on or around September 2022. She indicated that she believed he may have returned to Norway because he had been in the United Kingdom illegally and had no right to work in the United Kingdom. She had also been in touch with “an old friend” of the first named Respondent, who had suggested he had returned to Norway following the death of a family member. She indicated that she wished an Eviction Order to be granted to bring this tenancy to an end so that the Applicant could “get the property back”.

The Tribunal thereafter sought details from the parties on their circumstances and those of the first named Respondent. In relation to the first named Respondent, it was explained that he was 48 years old, he had no dependants and that it was understood he had no right to remain or work in the United Kingdom and that he may have returned to Norway. In relation to the second named Respondent, it was her wish that an Eviction Order be granted. The Applicant was asked about his circumstances, and he indicated that the non-payment of rent had caused him to have to “cut back on everything”. He explained that he had been reliant on the rental payment for the Property to help pay his own mortgage. That as a result of non-payment he had had to take a personal loan over 5 years amounting to £13,000 to help with paying his outlays (including borrowings over the Property, his home and another rental property in Fife) as well as a replacement car (his car having “died”). He had also had to convert his borrowings relative to the Property to “interest only” to assist with his costs. Whilst he did have another rental property in Fife, this was described as being at a lower rent level and not something that could make up the difference. The borrowing for this property had also been put onto “interest only”.

- Findings in Fact and Law

- 1) That the Applicant is the heritable proprietor of the Property.
- 2) That the Applicant and Respondents, entered into a tenancy for the Property which commenced on 26 May 2022.
- 3) The monthly rent was £925.
- 4) By Notice to Leave dated 19 December 2022 intimated by way of email the Applicant gave notice to the Respondents of his intention to recover possession of the Property in terms of Ground 10 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 19 January 2023.
- 5) The Notice to Leave dated 19 December 2022 was in the prescribed format.
- 6) That neither the Respondents occupy the Property as their only or principal home.
- 7) That the second named Respondent vacated the Property on or around 15 August 2022.
- 8) That the first named Respondent vacated the Property after on or around 12 January 2023.
- 9) That by 28 February 2023 the first named Respondent had no address within the United Kingdom and had likely returned to Norway.
- 10) That no notice to leave the Property or terminate the tenancy for same has been given by the first named Respondent.

- 11) That no rent for the Property has been paid by the Respondents since on or around November 2022.
- 12) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 10 of Schedule 3 has been made out.

- Reasons for Decision

The Applicant has complied with the notice requirements under the 2016 Act. It appeared to the Tribunal that neither Respondent was occupying the Property as their only or principal home. The second named Respondent confirmed she had vacated as at 15 August 2022 and that it was her understanding that the first named Respondent had subsequently vacated and returned to Norway following a death in his family. This appeared consistent with the information provided by the neighbouring residents, the trace report and the attempted access by another tribunal as detailed above. It was also consistent with the Applicant's own evidence of "periodic" attempts to visit the Property. The Tribunal was therefore satisfied that Ground 10 had been established. The only issue remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. Having heard from the Applicant and the second named Respondent, and having considered the relevant circumstances before them, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. Whilst there was no appearance by or on behalf of the first named Respondent, the Tribunal did seek information from the other parties about his circumstances, again as detailed above. There was nothing in the first named Respondent's circumstances as put before the Tribunal that were particularly compelling. Whereas, in contrast, the Tribunal noted the impact the continuing non-payment of rent was having on the Applicant and his financial position. Another factor that weighed heavily in favour of granting an Eviction Order was that it appeared that the first named Respondent had no right to reside in the United Kingdom or to work here. Another factor of significance was the second named Respondent's position and her desire to bring the tenancy to an end. The impact of allowing the tenancy to continue on the second named Respondent was also of significance to the Tribunal in that, as this was a joint tenancy, until it is brought to an end, she remains jointly responsible for the rent.

- Decision

That an Eviction Order should be granted.

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:



Date: 14th June 2023