



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/2399

Re: Property at 56 Cuiken Terrace, Penicuik, EH26 0DU (“the Property”)

Parties:

Claire Burnet, Kilmartin Cottage, Woodhouselee, Penicuik, EH26 0PF (“the Applicant”)

Mr Stuart Brian Elliot, 56 Cuiken Terrace, Penicuik, EH26 0DU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 17 July 2023 the Applicant’s representatives, Gilson Gray, Solicitors, Edinburgh, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of a tenancy agreement, Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act with proof of service, pre-action letters, Section 11 Notice with proof of intimation and a rent statement.
2. By Notice of Acceptance dated 8 August 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 17 October 2023.
4. By email dated 31 October 2023 the Applicant's representative submitted an updated rent statement to the Tribunal.

The Case Management Discussion

5. A CMD was held by teleconference on 21 November 2023. The Applicant did not attend but was represented by Mr David Gray of the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD had been given to the Respondent determined to proceed in his absence.
6. Mr Gray advised the Tribunal that the parties had entered into a Private Residential tenancy that had commenced on 24 June 2022 at a rent of £795.00 per calendar month. Mr Gray explained that the Respondent had fallen into arrears and that pre action letters had been sent to the Respondent. He said that various offers to clear the arrears had been made by the Respondent but these had not come to fruition. Mr Gray said that a Notice to Leave had been served on the Respondent on 7 April 2023 and at that time the rent due amounted to £2480.00. He said that the Respondent had made a payment in May 2023 but no payments had been received since that time and according to the rent statement submitted to the Tribunal on 31 October 2023 the rent due at that time was £4655.00.
7. Mr Gray went on to say that the Respondent lived in the property on his own. He was unemployed and he was not aware of the Respondent having any health issues. He said that the Respondent was unemployed and in receipt of Universal Credit but any rent element was not being paid to the Applicant. Mr Gray submitted that in the circumstances it was reasonable for the order to be granted.
8. In response to a query from the Tribunal Mr Gray confirmed that a Section 11 Notice had been sent to the local authority on 7 April 2023. He also confirmed that a separate application had been raised for payment of the outstanding rent against the Applicant and the guarantor and this was due to be heard in January 2024. Mr Gray confirmed he was aware that if the Tribunal granted the order, it would be subject to the regulations under the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Findings in Fact

9. The parties entered into a Private Residential tenancy that commenced on 24 June 2022 at a rent of £795.00 per calendar month.
10. At the date of service of a Notice to Leave on 7 April 2023 the Respondent had arrears of rent over three consecutive months.

11. On 7 April 2023 the Respondent owed rent of £2480.00.
12. Prior to raising proceedings, the Applicant's representatives sent pre-action letters to the Respondent.
13. The Applicant's representatives intimated the proceedings by way of a Section 11 Notice to the local authority on 7 April 2023.
14. By 31 October 2023 the Respondent owed rent of £4655.00.
15. The Respondent is unemployed and in receipt of benefits.
16. The Respondent has paid no rent since May 2023.
17. The Respondent lives in the property on his own.

Reasons for Decision

18. The Tribunal was satisfied from the written representations and oral submissions that the parties had entered into a Private Residential tenancy that commenced on 24 June 2023 at a rent of £795.00 per calendar month. The Tribunal was also satisfied that the Respondent had fallen into arrears and that at the time of service of a Notice to Leave on 7 April 2023 the Respondent owed rent of £2480.00 and had accrued rent arrears over three consecutive months. The Tribunal was further satisfied that as at the date of the CMD the arrears had risen to £4655.00.
19. The Tribunal was satisfied that the Applicant's representatives had complied with the pre-action requirements and provided the Respondent with information on where he could seek advice and that they had sent a Section 11 Notice to the local authority.
20. The Tribunal had to consider whether it was reasonable in the circumstances to grant the order sought. In reaching its decision the Tribunal took account of the very high level of rent arrears and the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. In the circumstances the Tribunal was satisfied that it was reasonable to grant the order given that no payment had been made by the Respondent since May 2023 and he was living in the property alone with no dependants and the Tribunal were not aware of any health issues or outstanding benefit claims.

Decision

21. The Tribunal having carefully considered the information before it and being satisfied it had sufficient information to allow it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**21 November 2023
Date**