



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/1745

Re: Property at 28 Cameron Cres, Hamilton, South Lanarkshire, ML3 6NT (“the Property”)

Parties:

Mr Graham Hastings, 1/43 Brinkin Terrace, Brinkin, Northern Territory, 0810, Australia (“the Applicant”)

Mr Scott McInall, 28 Cameron Cres, Hamilton, South Lanarkshire, ML3 6NT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Eileen Shand (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 recovery of possession of the property be granted.

Background

1. By application received on 30 May 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Grounds 11 (breach of tenancy agreement) and 12 (rent arrears for 3 consecutive months) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003,

a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £2,400 and evidence regarding the 'pre-action requirements'.

2. Following initial procedure and further information being submitted on behalf of the Applicant, on 5 September 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 23 November 2023 was served on the Respondent by way of Sheriff Officer on 19 October 2023. In terms of said notification, the Respondent was given until 8 November 2023 to lodge written representations. No representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference call on 23 November 2023 at 10am, attended by Ms Donna Marie Stewart of Igloo Estate on behalf of the Applicant. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
5. After introductions and introductory remarks by the Legal Member, Ms Stewart was asked to address the Tribunal on the application. She also answered some questions from the Tribunal Members. Reference was made to the terms of the application and the supporting documentation lodged with the Tribunal. It was noted by the Tribunal that the Applicant was seeking an order for eviction in terms of the application submitted to the Tribunal on Grounds 11 and 12. As to Ground 12, the rent arrears ground, Ms Stewart advised that no further rental payments have been made and that the rent arrears now amount to £6,600.
6. Ms Stewart confirmed that the primary eviction ground is the rent arrears ground. She referred to the Rent Statements lodged with the Tribunal and explained that the Respondent had basically paid rent to cover the first two months of the tenancy, which commenced on 21 November 2022, and nothing since. His first rental payment of £600 due at the commencement of the tenancy in November 2022 was paid, but he then failed to make the payment due on 21 December 2022 which is the month the rent account first fell into arrears. The Respondent made one further payment of £600 on 9 January 2023 which was allocated on the rent account to the rent due on 21 December 2022. He failed to make payment of the next rent payment due on 21 January 2023 or any other payments due since, such that the rent arrears now amount to £6,600. Ms Stewart advised that their organisation has been in contact numerous times with the Respondent regarding the rent arrears but consider that he has no intention to pay and is just staying on at the Property for as long as he can. Ms Stewart was asked about the pre-action requirements in respect of such an eviction application and she addressed the Tribunal in detail regarding this. She referred to the paperwork lodged and the extensive efforts they have gone to

on behalf of the Applicant to try and resolve the matter. The Respondent has made various excuses and promises to pay, but has never followed up on these, nor adhered to any payment plan. Ms Stewart was asked if they are aware of any financial difficulties being experienced by the Respondent or if he is in receipt or awaiting to receive any state benefits which could meet his housing costs. Ms Stewart stated that, to the contrary, the Respondent is believed to be in full-time employment as a carpet or flooring fitter, to have been on holidays abroad during the period of the tenancy and to have spent money on the Property on the unauthorised alterations. Ms Stewart indicated that the Respondent always seemed very busy with work and often said he could not make appointments with them because of his work. The Respondent lives alone in the Property which is a two-bedroom, four-in-a-block flat.

7. As to the second ground of eviction (Ground 11), Ms Stewart explained that it is the Applicant's position that the Respondent has breached the tenancy terms by carrying out unauthorised alterations to the Property, mainly the construction of a media wall in the living room and the installation of spotlights in place of the original lighting. Ms Stewart made reference to the photographs lodged with the Tribunal showing these matters and referred to the fact that the media wall was unsightly and badly finished and that the spotlights do not appear to have been installed very well. The Applicant is particularly concerned about the standard of workmanship regarding the spotlights and the possible electrical safety issues that may have arisen as a consequence. The Applicant wishes to recover the Property and reinstate it to its original condition. It was noted by the Tribunal that it is clause 28 of the tenancy agreement that relates to unauthorised alterations. Ms Stewart confirmed that the Respondent had not approached the Applicant or their organisation at any point seeking permission for these works, which would not have been given. Ms Stewart confirmed that they were granted access to the Property for an inspection when these photographs were taken. She stated that the Respondent had not been in at the time of the inspection and had arranged for his father to allow them access. The Respondent had promised to reinstate the Property at one point but then failed to do so.
8. As to the tenancy agreement, it was noted by the Tribunal that it had not been signed by the Respondent. Ms Stewart explained how that had come about and that the Respondent had tried to suggest that he was not bound by the tenancy terms and could therefore do what he liked. Ms Stewart had explained to him that this was not the case.
9. The Legal Member explained to Ms Stewart that, apart from the other elements of these eviction grounds being met, the Tribunal also required to be satisfied that it was reasonable for an order to be granted. As to the Applicant's circumstances, other than all the background circumstances already referred to above, Ms Stewart confirmed that her understanding is that the Applicant lived in the Property himself before moving to Australia and that this is his only rental property. The Applicant relies on the income from the rent and it is causing him considerable stress and anxiety to have this level of rent arrears accrued and due to the lengthy process involved in obtaining an eviction order. The Respondent is taking advantage of the situation which is causing the

Applicant and his representatives frustration and upset. The Applicant is also aware that he is going to have to spend money reinstating the Property to its original condition before it can be let out again. Although his financial losses may ultimately be recoverable from the Respondent, the current position is putting him under financial strain. Ms Stewart asked the Tribunal to find that reasonableness was satisfied in the circumstances.

10. The Tribunal adjourned briefly to discuss the application and, on re-convening, the Legal Member confirmed that the Tribunal was satisfied on all aspects and that an eviction order would be granted on the grounds sought. There was brief discussion regarding the procedure which will follow and Ms Stewart was thanked for her attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 21 November 2022.
3. The rent due in respect of the tenancy is £600 per calendar month.
4. Only the first rental payment of £600 was paid on time and from December 2022 onwards, the rent account has been in arrears.
5. The last payment towards rent was £600, made on 9 January 2023 and no payments have been made since.
6. The Applicant's agents have contacted the Respondent throughout concerning the arrears.
7. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
8. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
9. The rent arrears outstanding when this Application was submitted to the Tribunal amounted to £2,400 and have now risen to £6,600.
10. The Respondent has carried works to the Property which were not authorised by or on behalf of the Applicant, in breach of tenancy terms.
11. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by way of Sheriff Officer on 22 March 2023.
12. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 20 April 2023.

13. The Tribunal Application was submitted on 30 May 2023.
14. The Respondent remains in occupation of the Property.
15. The Respondent has not submitted any representations to the Tribunal nor attended the CMD.

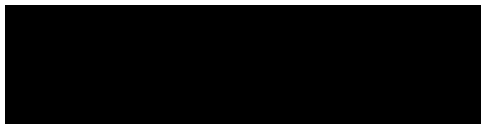
Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) and was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The rent account had been continuously in arrears for a significant period of time and amount to a significant sum which the Tribunal was satisfied would be having a negative impact on the Applicant's finances. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent and resolve the arrears situation and referring him for appropriate advice. Similarly, the Tribunal was satisfied that all aspects of Ground 11 were met, in that the Respondent had failed to comply with a term of the tenancy (other than rent), in that he had carried out unauthorised alterations to the Property. The Tribunal was satisfied regarding this matter from the photographs produced, supported by the oral submissions made by the Applicant's agent at the CMD. So too was the Tribunal satisfied that, in view of the Respondent's breach of tenancy, that it was reasonable to grant the order sought, both in terms of the Applicant's health and safety concerns regarding the standard of the work carried out and the likely costs to be incurred by the Applicant in reinstating the Property. As to the Respondent not having signed the tenancy agreement, the Tribunal did not have any doubt from the other documentary evidence produced, including correspondence between the Applicant's agents and the Respondent, supported by the oral submissions from Ms Stewart, that a tenancy in these terms was in place between the parties.

4. The Respondent has not engaged properly with the Applicant's agents, nor complied with previous payment and other proposals. The Respondent did not submit any written representations to the Tribunal, nor attend the CMD of which he had been properly and timeously notified by the Tribunal by way of Sheriff Officer service. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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

23 November 2023

Date