



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/23/3315

Re: Property at 8 Menock Road, Glasgow, G44 5UR (“the Property”)

Parties:

Miss Tracey Hanrahan, 60 Berryhill, Stirling (“the Applicant”)

Mrs Caroline Chinedu De La Morena, Mrs Esther nzeyimana, 8 Menock Road, Glasgow, G44 5UR (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondents, who occupy the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 10 January 2024, by teleconference. The Applicant was represented on the call by Mr Scott McGregor. The Respondents were not on the call in-person and were not represented.

Notice of the CMD was served, along with the application papers, on 15 November 2023, by sheriff officers. The Tribunal therefore was satisfied that the Respondents were aware of the CMD and had chosen not to attend; and that it was therefore fair to proceed in their absence.

- Findings in Fact

There was no opposition entered to the application, so the following were the relevant facts set out in the application that the Tribunal took into account in reaching its decision:

1. The Applicant lets the Property to the Respondents in terms of a private residential tenancy with a start date of 18 November 2022.
2. In terms of that tenancy agreement, rent of £1,250 is due each month.
3. The tenancy agreement also contains a term to the effect that the Respondents must inform the Applicant if any other person aged 16 or over occupies the Property, and, that they must ensure that any such arrangement does not render the Property an unlicensed house in multiple occupation.
4. On 18 March 2023, the Respondents fell into arrears of rent.
5. The Respondents have remained in arrears since.
6. On 26 July 2023, the Applicant's representative visited the Property and discovered there was third person occupying it.
7. On 11 August 2023, the Applicant sent a notice to leave to the Respondents indicating that she intended to rely on ground 11 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application for an eviction order to follow.
8. The Applicant sent letters to the Respondents on 25 August and 22 September 2023 complying with the pre-action protocol set out by the Scottish Ministers for rent arrears cases.
9. As of the date of the CMD, the Respondents were in arrears of rent of £7,580.

- Reasons for Decision

10. The Applicant had applied prior to the CMD to amend the application to rely also on ground 12A of Schedule 3 to the Act and to be given permission to include that ground in terms of s.52(5)(b). There was no opposition received to that application. The Tribunal considered it was fair to grant the application. The notice period for ground 12A is the same as for ground 11, which had been included in the notice to leave. There could be no question of the Respondents being unaware of the situation regarding their rent arrears, given the fact that the pre-action protocol had been followed and that notice had been given to them of the application to amend by the Tribunal. Further, the matter is conjoined with an application for an order for payment of precisely these arrears.

11. The Tribunal did not consider that Ground 11 had been made out by the Applicant. It was not clear that it would be reasonable to evict the Respondents on the basis only of a breach of the term cited from the tenancy in the notice to leave and the application. The Tribunal did not feel that breach of this term in itself suggested it would be reasonable to evict, and there was no other information presented which would suggest that it was.

12. Nonetheless, the Tribunal did consider that Ground 12A was established by the Applicant and, in particular, that it was reasonable to evict on that ground. The level of arrears is significant; and the Respondents have not made any attempt to contact the Applicant to discuss payment, notwithstanding that the pre-action protocol has been observed.

- Decision

Eviction order 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.

Nairn Young

10 January 2024

Legal Member/Chair

Date