



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/23/3871

Re: Property at 547 Charleston Drive, Dundee, DD2 4HS (“the Property”)

Parties:

Mr Tapiwa Wamambo, Flat 6 Ernid House, 20 Seale Street, St Helier, JE2 3QG, Jersey (“the Applicant”)

Miss Bethany Townsley, 547 Charleston Drive, Dundee, DD2 4HS (“the Respondent”)

Tribunal Members:

Valerie Bremner (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 an eviction order be granted in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant intends to occupy the let property as his only or principal home for at least three months and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

Background

1.This application for an eviction order in terms of rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 1st November 2023 together with a related application FTS.HPC.23.CV.3871 and both applications accepted by the Tribunal on 20th November 2023 .A case management discussion was fixed for 2nd February 2024 at 10am.

Case Management Discussion

2.The case management discussion was attended by Mr Wilkie of the Property Management Company to represent the Applicant who was not in attendance. There was no attendance by or on behalf the Respondent.The Tribunal members noted that the application and papers had been served on the Respondent by Sheriff officers putting these through the letterbox at the let property on 12th December 2023.The Tribunal was satisfied that the Respondent had been given fair notice of the application and case management discussion and that it was appropriate to proceed in her absence.

3.The Tribunal had sight of the applications, the tenancy agreement between the parties , an affidavit signed by the Applicant accompanied by verified identification of the Applicant, a Notice to Leave and email sending this to the Respondent, a rent account statement, and a notice in term of section 11 of the Homelessness etc (Scotland) Act 2003 sent to Dundee City Council on 31st October 2023.

4.Mr Wilkie advised the Tribunal that the Applicant had lived at the let property before he moved to Jersey for work reasons. His circumstances had now changed and he had returned to Scotland to live with effect from 1st August 2023. He is having to rent another property and this is proving expensive and he wishes to return to live in his home, the rented property.

5.The parties entered into a tenancy agreement at the property with effect from 23rd November 2018 with monthly rent of £450 payable in terms of this agreement which increased to £480 per month with effect from June 2021. Mr Wilkie said that the Respondent had not been a bad tenant. He was unsure if she had moved on as when he had passed the property some days before the case management discussion it appeared to be what he described as "light " on furniture. He said that he had told the Respondent some time before the Notice to Leave was sent to her, that the Applicant wanted to return to live at the let property and she had appeared surprised by this but indicated that she might want to move in with her partner.

6.When asked further regarding the property Mr Wilkie indicated that he had recently seen boxes piled up outside the property and had formed the view that the Respondent may be in the process of moving out. He had seen the hallway light at the property on in the evening and noted that there was still furniture at the property. He believed that there were still signs of occupation at the property and advised that the keys to the property had not been returned by the Respondent.

7.Mr Wilkie did not have a great deal of information on the Respondent's circumstances but was aware that she has one child whose age he did not know. The let property was a two-bedroom property. He believed that the Respondent and her child had no health issues or disabilities and that the Respondent worked part time in a pre-school nursery.

8.Mr Wilkie advised that rent arrears had accrued in terms of the tenancy and these had started when the Respondent had changed job. The rent arrears had come down slightly in August 2023 but had built back up and no payment had been received since November 2023.The rent arrears had now reached what he described as a worrying level for the Applicant and now stood at £1110.Mr Wilkie was not aware of any

information which might suggest the rent arrears had accrued due to any delay or failure in relation to benefit payments but understood that the Respondent paid rent in part from housing benefit which was paid to her directly.

9. The Tribunal had sight of a Notice to Leave sent to the Respondent by email on 17th July 2023 setting out the eviction ground being relied on and indicating that an application for an eviction order would not be submitted to the tribunal before 12th October 2023.

10. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Dundee City Council in relation to this application on 31st October 2023.

11. The Tribunal was satisfied it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

12. The parties entered into a private residential tenancy at the property with effect from 23rd November 2018.

13. The monthly rent payable in respect of this tenancy was initially £450 but this increased to £480 per month in June 2021.

14. The Applicant lived at the let property prior to renting it out to the Respondent and considers it to be his home.

15. The Applicant went to live in Jersey for work reasons and rented out the property to the Respondent at that time.

16. The Applicant's circumstances have changed and he has returned to Scotland with effect from 1st of August 2023 and intends to return to live at the let property as his only or principal home for a period of over three months as soon as he can.

17. The Applicant is renting another property which he is finding to be expensive and wishes to return to live at let property as soon as he can.

18. A Notice to Leave in proper form was sent to the Respondent by e-mail on 17th July 2023 setting out the eviction ground being relied on and indicating that an application for an eviction order would not be made to the first tier tribunal until 12 October 2023.

19. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Dundee City Council in respect of this application on 31st October 2023.

20. The Applicant understands that the Respondent is still occupying the let property although in the week before 2nd February 2024 it has been noted that items are piled up outside the property and it is considered that the Respondent may be in the process of moving out of the property.

21. The Respondent has not handed the keys of the property back to the Applicant or his representative.

22. The let property is a two-bedroom property and the Respondent occupies along with her child.

23. The Respondent and her child are believed to be in good health and the Respondent is in part time work.

24. The Respondent pays the rent with the assistance of housing benefit paid to her directly and rent arrears have accrued in terms of the tenancy.

25. Rent arrears have accrued for some time during the tenancy and have reached £1110.

Reasons for Decision

26. The tribunal was satisfied that the appropriate procedures have been carried out in order to seek the eviction order, the Notice to Leave giving appropriate notice and being in proper form and the notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 having been sent to the local authority. The tribunal was satisfied that the eviction ground was made out given the affidavit from the Applicant and the supplementary information presented at the case management discussion.

27. On the issue of reasonableness it was noted that the Respondent chose not to engage with or attend the Tribunal. The Tribunal followed the approach set out in *Barclay v Hannah*, 1947 SC 245 which indicates that the Tribunal is under a duty to consider the whole circumstances before it. In this application the Respondent had not attended to put forward her position but was known to live with her child at the property. There are no known health issues for them. No other information was known of the Respondent's circumstances other than that she receives housing benefit and works part time. The rent is in arrears of an amount equivalent to more than 2 months' rent. The Applicant has returned to Scotland and intends to live at the let property as his only home on an ongoing basis when it is vacant and he is currently renting another property which is proving to be expensive. The Tribunal weighed all the factors before it and balancing all known circumstances the Tribunal attached weight to the Applicant's position and the rent arrears accruing and in all of the circumstances the Tribunal took the view that it is reasonable to grant the possession order.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant intends to occupy the let property as his only or principal home for at least three months and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

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

2.2.24
Date
