

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/23/3277

Re: Property at 8 Selvieland Farm, Houston Road, Houston, PA6 7FG ("the Property")

Parties:

Mr Robert Capper, Auchans Farm, Johnstone, PA6 7EE ("the Applicant")

Mr Gerry Moran, 8 Selvieland Farm, Houston Road, Houston, PA6 7FG ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 6 March 2024, the Applicant was represented by Mr Ian Troy of Penny Lane Homes, Renfrew. The Respondent was represented by Mr Gerrard Andrew. Neither party attended personally.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/23/3278.

Prior to the CMD the Tribunal had received the following additional documents:-

1. Email from the Respondent dated 7 February 2024 with attachments; and
2. Email from Mr Troy dated 27 February 2024 with attachments.

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

Background

The Tribunal noted the following background:-

1. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 4 September 2018.

2. The rent payable in terms of the PRT was agreed to be £900 per calendar month payable in advance on the fourth day of each month.
3. On 8 March 2022 the Applicant served on the Respondent by Sheriff Officers a Rent Increase Notice dated 22 February 2022 purporting to increase the rent to £1150 per month from 7 June 2022.
4. On 11 May 2023, the Applicant purported to serve on the Respondent by email of the same date a Notice to Leave requiring the Respondent remove from the Property by 11 June 2023 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £3,000.
5. By email dated 18 September 2023 the Applicant served on Renfrewshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

Rent Increase Notice

At the CMD, the Tribunal firstly raised with Mr Troy concerns as to the validity of the Rent Increase Notice. In particular the Tribunal noted that the Sheriff Officers' letter of service on the Respondent was dated 8 March 2022. That date would therefore be day one of the minimum 3 month notice period required for a Rent Increase Notice to be valid. The notice period would therefore end on 7 June 2022 and the earliest date upon which an increase in rent would take effect would be 8 June 2022. The Rent Increase Notice stated that the rent increase to £1150 was effective from 7 June 2022.

Mr Troy stated that he agreed with the Tribunal's analysis that insufficient notice had been given for the Rent Increase Notice to be valid and that the rent therefore could only be charged at £900 per month all as per the PRT for the entire duration of the tenancy.

Taking that into account Mr Troy stated that the rent arrears presently stand at £3,600.

Notice to Leave

Having regard to the invalidity of the Rent Increase Notice the Tribunal then observed that the Notice to Leave was invalid as, having regard to the Rent Statement, there had not been 3 consecutive months of rent arrears at the point at which the Notice to Leave was apparently served. Again Mr Troy agreed that the Notice to Leave was invalid on that basis and that an eviction order could not therefore be sought.

The Tribunal observed in passing that the Notice to Leave was also not served at the Respondent's most up to date email address and that oversight may also have rendered it invalid but no further discussion on this point was required.

Mr Troy sought to withdraw the eviction application. The Respondent's representative had no remarks in the circumstances.

Reasons for Decision

Mr Troy, having accepted the Notice to Leave to be invalid sought to withdraw the application. The Tribunal simply dismissed the application.

Decision

The application is dismissed.

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. Buchanan

Legal Member

6 March 2024
Date