



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/23/4534

Re: Property at 2/2 Wheatfield Road, Edinburgh, EH11 2PS (“the Property”)

Parties:

Mr Douglas McDougall, 442 Lanark Road West, Balerno, Edinburgh, EH14 5SW (“the Applicant”)

Yasir Mahmood, Gul Sher, 2/2 Wheatfield Road, Edinburgh, EH11 2PS (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondents from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 29 February 2024 informing both parties that a CMD had been assigned for 9 April 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondents were invited to

make written representations by 21 March 2024. No written representations were received.

4. On 7 March 2024 the Tribunal received an updated rent statement from the Applicant's representative. A copy of this was sent to the Respondents.

The Case Management Discussion

5. The CMD took place by conference call. The Applicant was represented by Mr Raphael Bar. The Respondents did not join the conference call and the discussion proceeded in their absence. The Applicant's representative explained that the First Respondent made contact with him to advise that he vacated the property some considerable time ago. He also advised the Applicant's representative that the Second Respondent is subletting the property. The Applicant's representative arranged an inspection of the property. The agent who conducted the inspection reported that a number of mattresses were found on the floors in the property and it is believed that other people are living there. The Applicant's representative managed to make contact with the Second Respondent on a few occasions who said that he needed a week to move out of the property. However, he has said that on a number of occasions but has not moved out of the property. The Second Respondent has reportedly said to others that he has no intention of moving out or paying rent. The level of rent arrears has now increased to £7,013. The Second Respondent is believed to be in employment and does not have any dependents. The Applicant's representative sought the permission of the Tribunal to proceed on the basis of grounds 11 and 12 of the 2016 Act.

Findings in Fact

6. The parties entered into a private residential tenancy which commenced 1 February 2020.
7. The Applicant served Notice to Leave on the Respondents by email on 10 November 2023.
8. There has been a breach of clause 12 of the tenancy agreement on the basis that at least part of the property has been sublet.
9. The Respondents have been in arrears of rent for more than 3 consecutive months.

Reason for Decision

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicant relied upon ground 11 and sought permission to proceed on the basis of ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondents failed to participate in the CMD and failed to lodge any written representations. The rent statement produced demonstrates that the Respondents have consistently been in arrears of rent since December 2020. The Tribunal persuaded to exercise its discretion in terms of section 52 (5) (b) of the 2016 Act in allowing permission for the Applicant to proceed on the basis of ground 12 as well as ground 11. The Tribunal was satisfied that grounds 11 and 12 were established.
11. When the application was made, the balance of arrears was £3,245. The Respondents have failed to make any arrangement to pay the arrears of rent and the arrears have increased to £7,013. In addition, the information before the Tribunal is that the Second Respondent has breached the terms of clause 12 of the tenancy agreement. This appears to be a continuing breach of the tenancy agreement. Although the First Respondent has cooperated with the Applicant's representative, the Second Respondent has failed to engage with the Applicant's representative.
12. Given the significant period of time the Respondent has been in rent arrears, the Tribunal concluded that this is a tenancy which is not sustainable by the Respondents. On balance, the Tribunal concluded that the Applicant would be more prejudiced if the tenancy were to continue. The Tribunal was satisfied that it was reasonable to grant an order evicting the Respondents 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.

Nicola Irvine

9 April 2024

Legal Member/Chair

Date