



Decision 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/23/4403

Re: Property at 103 Sophia Crescent, Irvine, KA12 9BW (“the Property”)

Parties:

Mr James McGill, 80 Boglemart Street, Stevenson, KA20 3JL (“the Applicant”)

Ms Yvonne Moon, 103 Sophia Crescent, Irvine, KA12 9BW (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Tony Cain (Ordinary Member)

Decision

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

Background

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondent 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 30 April 2024 informing both parties that a CMD had been assigned for 6 June 2024 at 2pm, 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 Respondent was invited to make written

representations by 21 May 2024. No written representations were received by the Tribunal.

4. On 22 May 2024, the Tribunal received an updated rent statement from the Applicant's representative.

The case management discussion – 6 June 2024

5. The CMD took place by conference call. The Applicant was present on the call and was represented by Mrs Lucia Petrescu. The Respondent was present on the call and represented herself. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/23/4404. The Respondent accepted that the rent statement lodged is accurate and accepted that the sum remains outstanding. The Respondent was not opposed to the order sought being granted. She lives in the property with her young child. She has not found alternative accommodation yet and intends to contact the local authority to try to secure alternative accommodation. The Applicant's representative explained that the up to date rent statement lodged on 22 May 2024 shows that the rent arrears have increased to £8,774.15. The Respondent has not made any proposals for payment of rent arrears. The Respondent was in contact with the Applicant after the Notice to Leave was served and indicated that she intended to vacate the property just after Christmas 2023. Despite that stated intention, she remains in the property. There is prejudice to the Applicant in respect that rent arrears continue to increase. The Applicant had produced screenshots of message between him and the Respondent between October 2020 and November 2023 in relation to rent arrears. Although there had been contact between the parties about rent arrears, the Applicant did not comply with the pre-action protocol in relation to rent arrears.

Findings in Fact

6. The parties entered into a private residential tenancy which commenced 3 October 2018.
7. The Applicant served Notice to Leave on the Respondent by recorded delivery post on 14 June 2023.
8. The Applicant served a section 11 Notice on the local authority on 6 December 2023.
9. The Respondent has been in rent arrears for more than three 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 12 of the

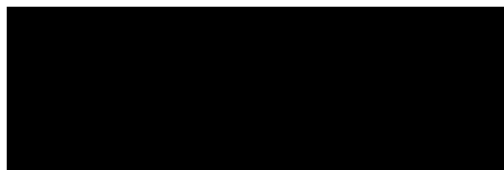
Private Housing (Tenancies) (Scotland) Act 2016. The Respondent accepted that the rent statement lodged is accurate and she did not oppose the application. The Tribunal was satisfied that ground 12 was established. In relation to the issue of reasonableness, the rent statement produced demonstrates that the Respondent has been consistently in arrears of rent since May 2020. Since the application was made, rent arrears have increased. Payment of rent is the Respondent's primary obligation in terms of the tenancy agreement. The Respondent has been given fair notice of these proceedings. The tenancy appears to be unaffordable by the Respondent. Notwithstanding the Applicant's failure to comply with the pre-action protocol, in light of all of the circumstances, the Tribunal was satisfied that it was reasonable to grant the order for eviction.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



N.Irvine

Legal Member/Chair

6 June 2024

Date