



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/24/0082

Re: Property at 163 Taylor Street, Methil, Fife, KY8 3AY (“the Property”)

Parties:

Ms Elaine Parker, Caledonian House, Links Road, Leven, KY8 4HS (“the Applicant”)

Ms Tasha Brown, 163 Taylor Street, Methil, Fife, KY8 3AY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 9 January 2024 the Applicant’s representatives, Lindsays, solicitors, Edinburgh, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Grounds 10, 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of a Tenancy Agreement, Notice to Leave, Schedule of Rent Arrears, copy correspondence to the Respondent and a Section 11 Notice together with other documents in support of the application.
2. By Notice of Acceptance dated 14 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 6 June 2024.
4. A Case Management Discussion (“CMD”) was held by teleconference on 10 July 2024. The Applicant did not attend but was represented by Mr Adam Gardiner from Lindsays LLP, Solicitors, Edinburgh. The Respondent did not attend nor was she represented.
5. The Tribunal noted that there was some doubt as to whether or not the Respondent was in fact residing in the property and that being the case whether she was aware of the proceedings. The Tribunal determined to continue the CMD to a further CMD and the Applicant’s representative undertook to email copies of the Tribunal’s CMD note and subsequent emails to the Respondent to ensure that she would be made fully aware of the date and time of the continued CMD. The Tribunal also requested that the Applicant’s representatives obtain further information from the Applicant’s letting agents regarding the Respondent’s circumstances.
6. By emails dated 21 and 22 August and 3 September 2024 the Applicant’s representatives submitted further written representations to the Tribunal together with an updated rent statement and other documents and photographs.

The Case Management Discussion

7. A CMD was held by teleconference on 4 September 2024. The Applicant was again represented by Mr Gardiner. The Respondent did not attend nor was she represented. Mr Gardiner referred the Tribunal to his emails of 21 and 22 August 2024 and confirmed that he had sent a copy of the CMD note of 10 July and the additional documents to the Respondent by Recorded Delivery post to the address he believed she was staying at and also to her by email. The Tribunal being satisfied that proper intimation had been given to the Respondent determined to proceed in her absence.
8. The Tribunal noted that a Notice to Leave had been served on the Respondent by Sheriff Officers under Grounds 10, 11 and 12 of Schedule 3 of the 2016 Act by Sheriff Officers on 30 November 2023 and that Pre-action Requirement correspondence had been sent to the Respondent by the Applicant’s representatives on 29 November 2023. The Tribunal also noted that a Section 11 Notice had been sent to Fife Council by email on 9 January 2024.
9. Mr Gardiner referred the Tribunal to the further written representations submitted on 21 and 22 August and 3 September 2024. He said that although the Respondent claimed to be using the property as her principal residence it was apparent from the information provided by the Applicant’s letting agents that she was not and that she was in fact residing at 17 McDonald Terrace Methil, Fife, with her partner and seven

children. Mr Gardiner referred the Tribunal to the letting agents' inspection report of 2 September 2024 which spoke of there being no gas or electricity at the property and unclaimed mail and mouldy food as well as other signs that no-one was living at the property.

10. Mr Gardiner advised the Tribunal that the current amount of rent outstanding was £3127.38. He suggested that rent was being paid and thought that the Respondent was in receipt of Universal Credit and that there may be a financial benefit to her retaining the tenancy of the property although not living in it.
11. Mr Gardiner submitted that the Applicant was in breach of Clause 16 of the tenancy agreement as she had been absent from the property for more than fourteen days and had not advised the Applicant.
12. Mr Gardiner submitted that the Applicant was entitled to an order for eviction under grounds 10, 11 and 12 of Schedule 3 of the 2016 Act and that it was reasonable to grant the order sought. He said that the Respondent had been given the opportunity to respond to the application and had chosen not to do so. He submitted that the Applicant was not only suffering from the loss of income from the property but was also unable to carry out her statutory duties in respect of annual gas and electrical safety checks. Mr Gardiner also said that the Applicant was concerned that the Respondent was failing to properly care for the property and also that given that there was a shortage of housing in the area it was inappropriate that the property should be left unoccupied particularly when the Applicant was prepared to rent to tenants in receipt of benefits.

Findings in Fact

13. The Respondent commenced a Private Residential Tenancy of the property on 18 February 2020.
14. A Notice to Leave under Grounds 10, 11 and 12 of Schedule 3 of the 2016 Act was served on the Respondent on 30 November 2023.
15. A Pre-action Requirement Letter was sent to the Respondent by the Applicant's representatives on 29 November 2023
16. A Section 11 Notice was sent to Fife Council on 9 January 2024.
17. The Respondent is not living in the property as her principal residence.
18. The Respondent is living with her partner and seven children at 17 McDonald Terrace, Methil, Fife.

19. The Respondent owes rent amounting to £3127.38 as at 18 August 2024.
20. The Respondent has failed to advise the Respondent that she has not been in occupation of the property for more than fourteen days.
21. The Applicant has been impeded from carrying out gas and electrical safety checks at the property due to the gas supply being capped and there being no electricity.

Reasons for Decision

22. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 18 February 2020. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Grounds 10, 11 and 12 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Fife Council by way of a Section 11 Notice.
23. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that despite being given an opportunity to submit written representations and to attend the CMD on two occasions the Respondent had chosen to do neither. The Tribunal was satisfied from the information before it that whilst the Respondent was still storing some belongings at the property it was quite apparent that she was not using it as her principal residence given there was no gas or electricity and the beds were not being used and the information from the Applicant's letting agents supported the conclusion that the Respondent and her children and partner were all living at 17 McDonald Terrace. The Tribunal was also satisfied that the Respondent had accrued substantial rent arrears both at the date of the service of the Notice to Leave and at the date of the CMD amounting to the equivalent of about six months' rent thus depriving the Applicant of income from the property. In addition, the Tribunal accepted that the Applicant was being impeded from carrying out her statutory safety checks at the property and that it was inappropriate that the property was effectively being left empty when it could be made available to another tenant. Therefore, in balancing the needs of the Applicant with the needs of the Respondent the Tribunal had no hesitation in concluding that it was reasonable to grant an order for the eviction of the Respondent from the property in the terms sought by the Applicant.

Decision

24. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent 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.

Graham Harding

Legal Member: Graham Hardin

Date: 4 September 2024