



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/24/2679

Re: Property at 25 Highfield Crescent, Motherwell, ML1 4BN (“the Property”)

Parties:

Ray Jacobs, 2 Lensway, Kettering, Northants, NN14 1TS (“the Applicant”)

Mr Scott Hewitt, 25 Highfield Crescent, Motherwell, ML1 4BN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and David Fotheringham (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 11 June 2024 the Applicant’s representatives, Smart Move Estate Agents (Scotland) Limited, Glasgow, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, email from Estate Agents together with other documents in support of the application.
2. By Notice of Acceptance dated 10 July 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 31 July 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 27 August 2024. The Applicant did not attend but was represented by Mr George Reynolds from the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD had been given to the Respondent determined to proceed in his absence.
5. Mr Reynolds explained that although the Respondent's current tenancy had commenced on 1 October 2023 the Respondent had occupied the property for many years under a Short Assured Tenancy. Mr Reynolds said that when the rent had been increased the previous year the Respondent had requested a new tenancy agreement.
6. The Tribunal noted that the Respondent had been served with a Notice to Leave by email on 15 January 2024. The Tribunal also noted that the Applicant intended to sell the property as he no longer wished to be a landlord. Mr Reynolds explained that the Applicant had one other let property that he was also intending selling.
7. The Tribunal noted that the Applicant's representatives had given notice of the proceedings to North Lanarkshire Council by way of a Section 11 Notice sent by email on 11 June 2024.
8. Mr Reynolds explained that he thought the Respondent may have some mental health issues as the Respondent would frequently telephone the Applicant's representatives and be verbally abusive to them particularly on a Friday. Mr Reynolds also said that in recent weeks the Respondent had stopped communicating with them and he thought that the Respondent might have left the property but he could not be sure.

Findings in Fact

9. The Respondent commenced a Private Residential Tenancy of the property on 1 October 2023 having previously been a tenant under a Short Assured tenancy.
10. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 15 January 2024.
11. A Section 11 Notice was sent to Glasgow City Council on 11 June 2024.

12. The Applicant has instructed Smart Move Estate Agents (Scotland) Limited to market the property for sale once vacant possession has been obtained.
13. The Applicant intends to cease being a landlord and sell the property and his other let property.
14. The Respondent has exhibited verbally abusive behaviour to the Applicant's representatives' staff.
15. The Respondent has accrued rent arrears.

Reasons for Decision

16. The Tribunal was satisfied from the documents submitted and the oral submissions that the parties entered into a Private Residential tenancy that commenced on 1 October 2023 although the Respondent had been a tenant at the property for a number of years before that. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Glasgow City Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and Mr Reynolds' oral submissions that the Applicant intends to use the Applicant's representatives to market the property for sale once vacant possession has been obtained.
17. 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 to the Tribunal and to attend the CMD the Respondent had chosen to do neither. The Tribunal had limited information before it with regards to the Respondent's circumstances although Mr Reynolds did say that it appeared that the Respondent may have some mental health issues given the abusive verbal behaviour addressed towards the Applicant's representatives' staff on numerous occasions. It was also far from clear as to whether or not the Respondent was still occupying the property although the Tribunal noted from the Sheriff Officer's report that the Respondent was still in the property on 31 July 2024. The Tribunal did take account of the fact that the Respondent was accruing substantial rent arrears. With regards to the Applicant's circumstances the Tribunal noted that the Applicant was not a professional landlord and that given the difficulties he had experienced with the Respondent he had decided that he no longer wished to be a landlord and intended selling both his let properties

18. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicant justified the granting an order for the eviction of the Respondent from the property. The Respondent had ample opportunity to participate in the proceedings and chose not to do so and has continued to accrue arrears of rent. Although according to the Applicant's representative the Respondent may have some mental health issues that would not in the Tribunal's view prevent him participating in these proceedings The Applicant has decided that he no longer wishes to be a landlord and wishes to sell his two let properties and the Tribunal considers that in this application it is reasonable to grant the order sought.

Decision

19. 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/Chair

Date: 27 August 2024