



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/24/0581

Re: Property at 52 Academy Street, Dumfries, DG1 1BZ (“the Property”)

Parties:

Mrs Mary Dawn Brazenall, 18 Catherine Street, Dumfries, DG1 1JF (“the Applicant”)

Mr N John Laing, formerly of 52 Academy Street, Dumfries, DG1 1BZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order and dismiss the application

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent under ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. In support of the application the Applicant provided a copy of the private residential tenancy agreement between the parties, Notice to Leave with proof of delivery, section 11 notice with proof of delivery and evidence to support ground 14 in the form of photographs and a statement from another resident of the property.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore scheduled and a copy of the application paperwork was served upon the Respondent by Sheriff Officers.

The Case Management Discussion

- 3 The Applicant was present at the Case Management Discussion and represented by Andrew Maxwell of Brazenall and Orr Solicitors. The Respondent was not in attendance. The Tribunal noted that he had been served with a copy of the application paperwork, which included the date and time of the Case Management Discussion, and therefore determined to proceed in his absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and asked Mr Maxwell to address it on the terms of the application.
- 5 Mr Maxwell explained that the original conduct complained of was in relation to damage to the property that had been caused by the Respondent. Following that there had been an incident of antisocial behaviour perpetrated by the Respondent at the property. Mr Maxwell made reference to the statement lodged with the application from one of the other residents of the property. Mr Maxwell explained that things had moved on since then. On the 4th July 2024 the Respondent had assaulted one of the other residents of the property and had been arrested by police. He had been released on an undertaking not to return to the property and criminal proceedings were ongoing regarding the incident. On 16th July 2024 the Respondent had been brought to the property by police and had removed his belongings. He had then handed the keys back to the Applicant. It therefore looked as if he had left the property however the Applicant was seeking the eviction order as a belts and braces exercise.
- 6 The Tribunal held a short adjournment to discuss amongst themselves before resuming the Case Management Discussion and confirming its decision.

Findings in Fact and Law

- 7 The Applicant and Respondent entered into a private residential tenancy agreement which commenced on 4 October 2023.
- 8 On 21 December 2023 the Applicant delivered a Notice to Leave to the Respondent. The Notice to Leave cited grounds 11 and 14 and confirmed that proceedings would not be brought any earlier than 21 January 2024.
- 9 On 4th July 2024 the Respondent was arrested in relation to an assault on a fellow resident of the property. The Respondent was released on an undertaking not to return to the property.
- 10 On 16th July 2024 the Respondent attended the property with the police and removed his belongings. The Respondent also returned the keys for the property to the Applicant.
- 11 The Respondent has ceased to occupy the property as of 16th July 2024.
- 12 The tenancy between the parties has been terminated as at 16th July 2024.

Reasons for Decision

- 13 The Tribunal was satisfied at the Case Management Discussion that it could make a decision on the application and that to do so would not be prejudicial to the parties. The Respondent had not made any written representations in response to the application nor had he attended the Case Management Discussion. There were therefore no issues to be resolved that would require a hearing to be fixed.
- 14 Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 states:-
“(1) A tenancy which is a private residential tenancy comes to an end if—
(a) the tenant has received a notice to leave from the landlord, and
(b) the tenant has ceased to occupy the let property.
(2) A tenancy comes to an end under subsection (1) on the later of—
(a) the day specified in the notice to leave in accordance with section 62(1)(b), or
(b) the day on which the tenant ceases to occupy the let property.”
- 15 In this case the Respondent had been served with a Notice to Leave. He had since removed his belongings from the property, and returned the keys to the Applicant on 16th July 2024. The Tribunal could therefore reasonably conclude that he had ceased to occupy the property as at that date, and, in accordance with section 50(2)(b) of the 2016 Act, that the tenancy had come to an end on 16th July 2024.
- 16 The Tribunal therefore determined not to make an eviction order as there was no longer any private residential tenancy in existence that would enable the Tribunal to do so. The application was accordingly dismissed.
- 17 The decision of the Tribunal was unanimous.

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.

R O'Hare

Legal Member/Chair

Date 13th August 2024