



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/24/1578

Re: Property at 16 John Street, Montrose, Angus, DD10 8LZ (“the Property”)

Parties:

Mr John Wilson, Mrs Lorraine Wilson, 42 Castle Heather Avenue, Inverness, IV2 4DR (“the Applicant”)

Mr Martin Ronan Hutchison, 16 John Street, Montrose, Angus, DD10 8LZ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The Applicants 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 27 August 2024 informing both parties that a CMD had been assigned for 8 October 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 Respondent was invited to make written representations by 17 September 2024. No written representations were received by the Tribunal.

The case management discussion – 8 October 2024

4. The CMD took place by conference call. The Applicants were represented by Mrs Elizabeth Addison. The Respondent did not join the call, and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD. The Applicants' representative relied on ground 11, 12 and 14.
5. In relation to ground 11, the Respondent kept a dog in the Property without permission and the Respondent reported that the dog died in the Property. At the last inspection, dog faeces were observed under newspapers on the floor. During the inspection, it was noted that the smoke and carbon monoxide alarms were not operational and had been tampered with. The Respondent has broken windows in order to gain access to the Property because he has lost keys. The Applicants' position about all of these issues was that the Respondent had breached clause 17 of the tenancy agreement by failing to take reasonable care for the Property.
6. In relation to ground 12, the Applicants' representative explained that the Respondent has been making payments in addition to the sum paid by universal credit, which has resulted in the rent arrears reducing to £1,137.02. However, the Respondent has been consistently in arrears of rent since September 2018.
7. In relation to ground 14, the Applicants relied upon the emails from neighbours which have been produced.
8. The Applicants' representative made contact with the homelessness team and was advised that the Respondent stopped engaging with them in January 2024. Since the Applicants' representative made contact, the homelessness team has re-opened their records and will seek engagement from the Respondent.

Findings in Fact

9. The parties entered into a private residential tenancy which commenced 1 August 2018.
10. The Applicants served Notice to Leave on the Respondent by sheriff officer on 6 February 2024.
11. The Respondent has breached clause 17 of the tenancy agreement by keeping an animal in the Property without consent of the Applicants and by failing to take reasonable care for the Property.

12. The Respondent has been in arrears of rent arrears for more than 3 consecutive months.

Reason for Decision

13. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicant relied upon grounds 11, 12 and 14 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent did not lodge any written representations and did not participate in the CMD. There was nothing before the Tribunal to indicate that the Respondent disputed the level of rent arrears. The Respondent has been in arrears of rent almost since the inception of the tenancy, more than 6 years ago. The photographs lodged supported the submissions in relation to a breach of clause 17 of the tenancy agreement. The Tribunal was satisfied that grounds 11 and 12 were established. Although there was information from neighbours about the Respondent's conduct, there was insufficient material before the Tribunal to find that ground 14 had been established. Having found 2 grounds established, the Tribunal considered the issue of reasonableness. It noted that the Applicants' representative has made efforts to engage the homelessness team on behalf of the Respondent. Although the level of rent arrears has reduced recently, the Respondent has been consistently in arrears of rent since September 2018. In light of the long standing history of arrears and the condition of the Property, the Tribunal concluded that the tenancy is not sustainable. Accordingly, it 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.

Nicola Irvine

Legal Member/Chair

8 October 2024
Date