



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/24/0764

Re: Property at 157 Magdala Terrace, Galashiels, Scottish Borders, TD1 2JB (“the Property”)

Parties:

Cross Properties Ltd, 60 Abbotsford Road, Galashiels, Scottish Borders, TD1 3HP (“the Applicant”)

Mr Jake Mulroy, 157 Magdala Terrace, Galashiels, Scottish Borders, TD1 2JB (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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 23 October 2024 informing both parties that a CMD had been assigned for 28 November 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 case management discussion – 28 November 2024

4. The CMD took place by conference call. The Applicant was represented by Mr Mike Erskine. The Respondent did not join the call, and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD.
5. The Applicant's representative explained that since the application was submitted, rent arrears have increased to £5,957.50. The Respondent was in receipt of universal credit and the Applicant applied to receive payment of the housing element directly from the Department for Work and Pensions. That application was rejected. The Applicant has attempted contact with the Respondent but he has not engaged. The last written communication from the Respondent was in November 2023 when he indicated that he cannot afford to pay the rent. The last payment of rent made by the Respondent was on 5 September 2023, although he was arrears of rent before that date. The Respondent is believed to live alone in the Property.

Findings in Fact

6. The parties entered into a private residential tenancy which commenced 24 June 2022.
7. The Applicant served Notice to Leave on the Respondent by recorded delivery post on 21 November 2023 by email and recorded delivery post.
8. The Respondent has been in arrears of rent arrears for more than 3 consecutive months.

Reason for Decision

9. 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 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 consistently in arrears of rent since June 2023. The Tribunal was satisfied that ground 12 was established. Having found the ground established, the Tribunal considered the issue of reasonableness. It noted that the Applicant complied with the pre-action protocol in an attempt to assist the Respondent. It appears that the tenancy is unaffordable to the Respondent. In light of the history of arrears, 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

28 November 2024

Date