

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/2668

Re: Property at Stewards House, Robertland Estate, Old Glasgow Road, Kilmarnock, KA3 5JP (“the Property”)

Parties:

Mr Brian Parsons, Foster Lodge, St George Parish, BB19020, Barbados (“the Applicant”)

Mr Paul Johnston, Stewards House, Robertland Estate, Old Glasgow Road, Kilmarnock, KA3 5JP (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 11th June 2024. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 16th October 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 25th November 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 6th November 2024.

3. On 17th October 2024, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 17th October 2024.

The Case Management Discussion

4. A CMD was held on 25th November 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Nicola Brechany, Solicitor, TC Young. The Respondent was present and represented himself.
5. Ms Brechany said that the Applicant still wanted an order for eviction. She said that the rent charge was increased by £100 when the lease was amended to reflect the additional use of another piece of land known as the Milk Parlor. She said that the outstanding arrears are currently £1150. There have been no payments made since August 2023.
6. Ms Brechany said that there has been an agreement reached for the Respondent to leave the Property on 31st December 2024. The Applicant will not pursue the arrears and the Applicant will not be challenging the return of the Respondent's deposit. This is on the provision that the utility bills are addressed prior to leaving the Property.
7. The Respondent said that the house was inhabitable. There were significant repairs needed. He had notified the Applicant but the repairs had not been undertaken. He moved out of the Property in August 2023. He told the Applicant that he was moving into another property. He also told him that he would be not paying the rent as he had other costs associated with moving. He is currently still in the same property that he moved into in August 2023. It does not suit his needs as it is in a busy place where as he needs to be in a rural location for health reasons. However, it is a place he can remain until he can find an alternative property in a rural location. He is paying rent but does not have a lease. He is stable in this property so has not found the need to contact his local authority homeless department. The Respondent also disputed that the rent increase was in relation to the use of the Milk Parlor as he had been allowed to use it for 5 months before the rent increase.
8. The Respondent said that he had contacted the Applicant's solicitor regarding the proposal to leave on 31st December 2024. He accepts responsibility for the utilities. There is only electricity. He is currently in dispute with his electricity provider. He admitted liability for the electricity bill once the dispute has been resolve. At that point he will settle the bill. The Respondent said that he will arrange for someone to return the keys to the Applicant once he has moved out on 31st December 2024. He will arrange for them to take them to the Applicant's own house which is very close to the Property.
9. The Tribunal was satisfied that ground 12 had been met. Given that granting an order was not opposed the Tribunal was satisfied that it was appropriate to grant an order for eviction.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 30th August 2019.
11. The Respondent persistently failed to pay his rent charge of £725 per month. The rent payments are due to be paid on the last day of each month.
12. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the hearing.
13. The Respondent is not opposed to an order being granted. At the Respondent's instigation, parties have agreed that the Respondent will leave on 31st December 2024. The Applicant will not pursue the arrears and will not oppose the return of the deposit to the Applicant on the provision that the utility bills are cleared. The Respondent is taking responsibility for the utility bills but is in a dispute with his provider at the moment.
14. There are no issues of reasonableness that prevent an order from being granted.

Decision

15. The Tribunal found that ground 12 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller
Legal Member/Chair

25th November 2024
Date
