



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/0555

Re: Property at 16 Luing, Airdrie, ML6 8EB (“the Property”)

Parties:

Mr Scott McLean, 147 Luing, Airdrie, ML6 8EB (“the Applicant”)

Mr Stephen McGuinness, Ms Lisa Taylor, 16 Luing, Airdrie, ML6 8EB (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the application for the order for possession should be granted against the respondent Lisa Taylor

Background

1. Two separate applications had been lodged by the applicant seeking firstly, an eviction order in respect of a private residential Tenancy (FTS/HPC/EV/20/0555) and secondly, an order for payment of rent arrears arising from that tenancy (FTS/HPC/CV/20/0556).
2. The applications have not been formally conjoined but have been linked and a Case Management Discussion (“CMD”) in respect of both applications took place on 16 October 2020. At the conclusion of the CMD , the tribunal decided

that a full hearing should take place. The hearing was fixed for 18 December at 10.00 am and appropriate intimation of the hearing was sent to the parties

The hearing

3. The hearing took place on 18 December 2020 via telephone case conference. The applicant took part in the telephone case conference. Neither of the named respondents took part in the telephone case conference .
4. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the applicant with regard to the application.
6. The applicant was questioned by the tribunal with regard to the tenancy which had been created.
7. He stated that he had decided to let out his flat at a time when he had moved to stay with his girlfriend. He advertised the flat on the Gumtree website and received a call from the respondent Lisa Taylor. He met with her and agreed that she could rent the flat. They agreed a rent of £450 per month. She paid him the first month's rent. He gave her the keys and she moved in.
8. The applicant is registered as a landlord with the local authority although he had never previously let out any property before.
9. He indicated that a friend's wife, Amy Arnott, drew up a handwritten tenancy agreement which he handed to Miss Taylor and asked her to sign it and return it to him.. Miss Taylor has never returned this written agreement to him.
10. He indicated that he is aware that Miss Taylor has a boyfriend who was staying with her and her children in the flat.. The tribunal noted there had been some confusion with regard to the surname name of this boyfriend. Miss Taylor had confirmed at the CMD that his surname was McInnes not McGuinness. The

applicant's position was that no matter what the name, he now accepted that the boyfriend was not a party to the tenancy.

11. During further questioning the applicant indicated that Mr McInnes had been arrested and removed from the property and at some point an antisocial behaviour order (ASBO) had been granted against him. He had received a letter from the local council regarding the ASBO but had not retained the letter. He had spoken to someone at the local council but could not remember that person's name.
12. The applicant indicated that he received payment of the first month's rent in cash from Miss Taylor. He then returned to the property approximately a week later to ask for a deposit of £450 which he indicated was paid by cash payments over a period of three weeks. He had been advised to obtain a deposit. He had not lodged this deposit with a tenancy deposit scheme.
13. The applicant then stated that since receiving those initial payment totalling £900 in respect of the first month's rent and the deposit he has not received a single penny from Miss Taylor. He indicated that he attended at the property regularly seeking rental payments but was given various excuses by Miss Taylor.
14. The applicant indicated that he is in full-time employment and has been with his current employer for 23 years. He purchased the property approximately 15 years ago and initially lived in it until he moved out to stay with his girlfriend. He is now living with his mother.
15. In an affidavit which had been produced to the tribunal, the applicant indicated that he had no bank account and that his wages were being paid into the account of the wife of a friend. That person was identified by the applicant as Pauline Rooney. The applicant indicates that he now has his own bank account and that his wages are now being paid to his own bank account. He indicated that the reason for using Miss Rooney's bank account was that his own account

with the Royal Bank Of Scotland had been closed just prior to the tenancy starting.

16. The applicant indicated that he is under pressure from the bank with regard to mortgage payments and that there may be repossession proceedings pending by the bank. He indicated that the bank have given him a period of grace to recover the property and to sell it.
17. The applicant confirmed that he wished the tribunal to grant the order for eviction on the basis that he has not received a penny in rent for this property for a period in excess of two years.

Findings in Fact

18. The applicant and the Respondent, Lisa Taylor, as respectively the landlord and tenant entered into a tenancy of the property which commenced on or around May 2018
19. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
20. The agreed monthly rental was £450.
21. On 23 July 2019 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served by sheriff officers upon the respondents and became effective on 25 August 2019.
22. The notice informed the respondents that the landlord wished to seek recovery of possession using the provisions of the Act.
23. The notice was correctly drafted and gave appropriate periods of notice as required by law.

24. The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant had been in arrears of rent for three or more consecutive months
25. Arrears had started to accrue shortly after the commencement of the tenancy and at the date of service of the Notice to Leave amounted to £5850.
26. At the date of the lodging of the application arrears amounted to £9,450.00
27. The amount of arrears at the date of the CMD on 16 October 2020 were £12,600 which exceeded one month's rent
28. No payments had been made towards rent or arrears between the date of the CMD and the hearing on 18 December 2020
29. The basis for the order for possession was accordingly established

Reasons for decision

30. This is an unusual case. There is no written tenancy agreement produced in respect of the tenancy. However both the applicant and Miss Lisa Taylor have confirmed to the tribunal that they agreed that Miss Taylor would rent the property from the applicant. The absence of a written tenancy agreement does not affect the validity of the tenancy. By law that tenancy is a private residential tenancy in terms of the relevant legislation.
31. At the CMD, Miss Taylor accepted that she had missed some payments of rent during a period when her child was in hospital. The applicant's position is that Miss Taylor has never paid anything since the initial payment. At the conclusion of the CMD the tribunal issued a note. In that note the tribunal indicated to Miss Taylor that she should produce to the tribunal evidence of the payments she claimed that she had made. The tribunal notes that no evidence has been lodged and that Miss Taylor did not attend the hearing.

32. The tribunal has noted the evidence given by the applicant at the hearing and the evidence provided by Miss Taylor at the CMD. The tribunal accepts the evidence of the applicant that he has received no payment of rent in respect of this property since the first payment was made by Miss Taylor.
33. The tribunal also accepts the evidence given by Miss Taylor ,and now accepted by the applicant, that the tenancy did not involve Mr McInnes. The tribunal accordingly notes that although an application was lodged against Stephen McGuinness that any orders to be granted should only be granted against Lisa Taylor. The tribunal will make no orders against “Stephen McGuinness”
34. Although the applicant was unable to produce any documentation in relation to the tenancy or in relation to the alleged ASBO, the tribunal accepted that he gave his evidence at the hearing in an honest and open manner. He accepted that he had not kept appropriate records. He seemed to accept that his manner of dealing with correspondence was not satisfactory and that he would retain important correspondence in the future.
35. The tribunal accepts that the respondent in this case has not paid rent for the considerable period of time. Even from her own admission at the CMD she is in arrears in excess of one month’s rent and has been in arrears since at least October 2018. The tribunal notes she has failed to produce any proof of her claims to have made payments and her failure to attend the hearing
36. Accordingly the tribunal finds that the relevant ground for eviction is established both from the evidence presented by the applicant that the hearing and from the evidence provided by Lisa Taylor at the CMD.
37. The tribunal concluded that the eviction order required to be granted in terms of the relevant legislation

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.

J. B

Legal Member/Chair

Date