



Statement of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/19/0801

Re: Property at 1A, Flat 2, Trafalgar Lane, Edinburgh, EH6 4DJ (“the Property”)

Parties: Miss Alison Miller, 6/1 Albion Gardens, Edinburgh, EH7 5QL (“the Applicant”)

Ms Sylwia Zielinska, 1A, Flat 2, Trafalgar Lane, Edinburgh, EH6 4DJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 11 March 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property under Rule 109 of the First-

tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. On 19 March 2019 the Tribunal gave notification of acceptance of the application to the Applicant.
3. On 23 April 2019, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 11 May 2019. The Tribunal advised parties on 23 April 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 24 May 2019. This paperwork was served on the Respondent by Alexander Irvine, Sheriff Officer, Glasgow on 24 April 2019 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 11 May 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 24 May 2019. The Applicant was personally present. The Respondent did not appear and was not represented..
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 15 December 2018, a Notice to Leave dated 5 February 2019, a copy advertisement for the Property from Gumtree, a copy letter dated 1 February 2019 from the Applicant to the Respondent, an undated email from the Respondent to the Applicant, an undated email from the Applicant to the Respondent a copy bank statement dated 8 March in the name of the Applicant, 3 pages of emails dated 5 February – 8 March 2019 from the Applicant to the Respondent and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to the City of Edinburgh Council dated 11 March 2019.
7. The Applicant moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016.Act”).
8. The Applicant explained to the Tribunal that the Applicant and the Respondent entered into a Private Residential Tenancy dated 15 December 2018 in relation to the Property. In terms of Clause 10 of the Private Residential Tenancy Agreement, the Respondent agreed to pay a deposit of

£700 in two equal instalments of £350 to the Applicant on 31 December 2018 and 26 January 2019.

9. The Applicant explained the Respondent had failed to pay the second deposit instalment of £350 due on 26 January 2019 and was in arrears of rent. She referred to her letter to the Respondent dated 1 February 2019 in which she demanded payment of the remainder of the deposit of £350 and the rent of £700 due on 3 January 2019. She also referred to the email from the Respondent stating that £700 had been paid into the Applicant's account and that £350 would be paid for the rest of the deposit. The Applicant explained that £700 rent had been paid to the Property account at the beginning of February. She referred to her email reply to the Respondent seeking confirmation the remainder of the tenancy deposit of £350 would be paid on Tuesday 5 February 2019. No reply had been received from the Respondent.
10. The Applicant went onto explain that the deposit remained unpaid on 5 February 2019. She referred the Tribunal to Notice to Leave under Section 50(1) and Ground 11 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 dated 5 February 2019 addressed to the Respondent and served on the Respondent by email to the Respondent on 5 February 2019. Under Clause 4 of the tenancy agreement parties were in agreement that all communication including notices could be served by way of email at the email address set out in Clauses 1 and 2. The said Notice to Leave had been sent to the Respondent at the email address stated in Clause 1. The Applicant also referred to subsequent emails to the Respondent dated 12 February, 1 and 12 March 2019 regarding the Notice to Leave to which she had received no reply.
11. The Applicant explained that she had relied on the deposit being paid to cover her if the Property was not as it should be at the end of the tenancy. She produced an up to date banks statement for the Property which showed the deposit instalment of £350 was still unpaid. She produced a letter dated 2 May 2019 to the Respondent asking that that be paid immediately. She had heard nothing from the Respondent since her email at the beginning of February. She explained the Respondent was working.
12. The Respondent had not vacated the Property. The requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the City of Edinburgh Council on 11 March 2019 by email.

Findings in Fact

13. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement dated 12 December 2018 in relation to the Property. The Respondent agreed to pay the Applicant a deposit of £700 in two equal instalments of £350 due on 31 December 2018 and 26 January 2019.
14. The Respondent paid the initial instalment of the deposit of £350 on 31 December 2018.
15. The Respondent has not paid the second tenancy deposit instalment of £350 due on 26 January 2019.
16. The Applicant has attempted to engage with the Respondent to get her to pay the outstanding rent and deposit. The Respondent has refused to do so.
17. On 5 February 2019 the Applicant served a Notice to Leave on the Respondent requesting that she remove from the Property by 8 March 2019. Parties had agreed in terms of Clause 4 of the tenancy agreement that such a notice could be served by way of email.
18. The Respondent was still resident in the Property. The Respondent was working. The Respondent had refused to engage with the Applicant.
19. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on the City of Edinburgh Council by way of email on 11 March 2019.

Reasons For Decision

20. The Applicant provided evidence of non-payment of the deposit in the form of her bank statements and supporting email correspondence. The Tribunal was also satisfied on the basis the supporting oral submissions made by the Applicant that the Respondent has failed to pay the second deposit instalment due to the Applicant on 26 January 2019. The Respondent had ignored the Applicant's repeated requests for this to be paid. The Respondent had not engaged with the Applicant. The Respondent was working. In the circumstances the Tribunal considered it reasonable to issue an eviction order.

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.

Ms Shirley Evans

~~Shirley Evans~~
Legal Member/Chair

24 May 2019
Date