



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/20/1998

Re: Property at Top Flat, 34 Crossgate, Cupar, Fife, KY15 5HH (“the Property”)

Parties:

Mr Roy Methven Dawson, residing at Muirhead of Pitcullo, Dairsie, Cupar, KY15 4SF (“the applicant”)

Mr Anthony Jellie, Top Flat, 34 Crossgate, Cupar, Fife, KY15 5HH (“the respondent”)

Tribunal Members:

David Preston (Legal Member)

Decision (in absence of the Respondent)

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

Background:

1. By application dated 17 September 2020 the applicant applied to the tribunal for an order for eviction and possession of the property on the basis of Grounds 1, 11, 12 and 14 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).
2. By Decision dated 5 October 2020, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to a Case Management Discussion (CMD). A letter of Intimation dated 15 October 2020, with Notice of the CMD to be held by telephone on 18 November 2020 at 14:00 together with the case papers was served on the respondent by Sheriff Officers on 19 October 2020. The tribunal was provided with a copy of the Sheriff Officer’s Certificate of Citation of that date.

Case Management Discussion

3. Ms Debbie Brogan, Solicitor appeared along with Mr David Anderson, Advocate attended on behalf of the applicant. The respondent neither appeared nor was represented.
4. Notice of the CMD had been duly served on the respondent together with a full set of papers relating to the application. The tribunal was satisfied that due notice had been given to the respondent to which he had failed to respond and was happy to proceed with the CMD in his absence.
5. The papers before the tribunal comprised:
 - a. Paper Apart accompanying the application;
 - b. Tenancy Agreement dated 7 October 2018;
 - c. rent schedule covering the period 1 November 2018 to 1 September 2020 showing arrears of rent to that date of £3463.02;
 - d. copy undated Notice to Leave with Proof of Posting dated 28 July 2020 and Proof of Delivery dated 29 July 2020;
 - e. Notice under section 11 of the Homelessness etc (Scotland) Act 2003;
 - f. letter of engagement from Lawrie, Estate Agents dated 24 July 2020;
 - g. title deeds relative to the property title Number FFE47161;
 - h. various text messages from the respondent, March 2020;
 - i. written submissions on behalf of the applicant dated 19 October 2020.
6. Mr Anderson adopted the terms of the Submission for the Applicant dated 19 October 2020 and invited the tribunal to allow the application to proceed in terms of section 52(4) of the Private Housing (Tenancies) (Scotland) Act 2016 and thereafter to grant an order for eviction. He submitted that in view of the fact that the respondent had not submitted any representations to the tribunal and had failed to attend the CMD he had effectively admitted the grounds for eviction in full by not indicating any opposition.

Reasons for Decision:

7. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
8. As a preliminary matter the tribunal considered the application under section 52(4) of the Act. The relevant parts of the Act (as amended by the Coronavirus (Scotland) Act 2020 provide:

52 Applications for eviction orders and consideration of them

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following-

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

9. Accordingly, under section 52(2)(b) the tribunal may entertain an application submitted before the expiry date stated in the Notice to Leave if it considers that it is reasonable to do so. In the present case the expiry date was 2 November 2020 and the application was dated 17 September 2020.

10. In determining whether it is reasonable to proceed, the tribunal must take account of the whole of the circumstances in which the application is made. Were the respondent to have made representations or attended the CMD, it may have been necessary for me to make enquiries and possibly fix a full hearing to ascertain the

respondent's circumstances. In the absence of any such representations I consider that the circumstances outlined by the applicant in the Paper Apart demonstrate that it would be reasonable to entertain the application.

11. The applicant wishes to proceed on the basis of grounds 1, 11, 12 and 14. The Paper Apart narrates in detail the circumstances in which the applicant seeks to proceed on each of these grounds as follows:

a. *Ground 1:* The title deeds demonstrate that the applicant is the heritable proprietor and is therefore entitled to sell the property. He has taken steps to engage an estate agent to market the property as evidenced by the letter from Lawrie Estate Agents.

b. *Ground 11:* The applicant explained that although the tenancy agreement between the parties dated 7 October 2018 took the form of a Short Assured Tenancy, it was nonetheless a Private Residential Tenancy under the Act as it had been entered after the date of commencement of the Act. Clause 17i of the tenancy agreement provides;

The Tenant agrees not to cause (nor allow other occupiers, guests or visitors to the Accommodation to cause) nuisance annoyance or disturbance to neighbours, or to the Landlord, his agents or employees.

The applicant advised that in around March 2020 and prior to seeking legal advice on this case, he intimated to the respondent that he intended to recover possession. In response to this intimation, the respondent sent a number of text messages to the applicant's wife, who was acting on his behalf at that time, which were threatening and abusive and caused the applicant and his wife nuisance, annoyance and disturbance. Copies of the text messages were lodged within the papers accompanying the application.

c. *Ground 12:* The rent schedule lodged by the applicant demonstrated that the rent of £560 per month remained unpaid after 1 February 2020 apart from two payments of £375 and £81.98 paid on 1 August and 1 September 2020 respectively leaving accrued arrears of rent in the total of £3463.02.

d. *Ground 14:* The applicant submitted that the respondent's behaviour in sending text messages to the applicant's wife as outlined in paragraph (b) above was harassment and as such amounted to antisocial behaviour.

12. As outlined above, I was satisfied that the respondent has received due notice of the detailed allegations outlined in the Paper Apart as well as the Submissions dated 19 October 2020, which were copied to the respondent by letter dated 23 October 2020, and which I accept as *prima facie* established in the absence of any opposition or representations from the respondent.

13. In all the circumstances of this application I consider that the applicant has demonstrated that the test to apply section 52(4) is met and that it is reasonable for the tribunal to entertain the application.

14. In addition, and in the absence of any representations or submissions by behalf of the respondent find that the grounds for eviction are established.

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.

D. P