

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/20/2501

Re: Property at 357 George Street, First Floor Right, Aberdeen, AB25 1EQ (“the Property”)

Parties:

Mr Graeme Tocher, c/o 2 Corse Grove, Bridge of Don, Aberdeen, AB23 8LR (“the Applicant”)

Mr Nwaora Randall Ene, 357 George Street, First Floor Right, Aberdeen, AB25 1EQ (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the respondent’s eviction from the property be granted on the basis that the short assured tenancy has expired and it is reasonable to grant the order.**
2. This was a case management discussion ‘CMD’ in connection with an application in terms of s33 of the Housing (Scotland) Act 1988 and rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ for eviction on the expiry of a short assured tenancy.
3. The applicant was represented by Mr Martin Kingdon of Peterkins Solicitors. The respondent was not present, and he was not represented. The tribunal was satisfied that the respondent was aware of the hearing. The first CMD scheduled for 15 February 2021 was postponed at the respondent’s request. The respondent had submitted a copy of his father’s death certificate dated 3

February 2021. The respondent also stated that the months of February and March are special moments in his religion and belief. The tribunal wrote to the parties on 19 February 2021 notifying them of the new CMD scheduled for 26 March 2021. The respondent wrote to the tribunal chamber by email on 26 February 2021 seeking to have the CMD scheduled for 26 March 2021 at 2pm, postponed. That request was refused by the legal member. The respondent wrote a further email to the tribunal chamber on 26 March 2021. It was not clear to the tribunal what point the respondent was making in that letter. The tribunal was satisfied that the respondent had received notification of the CMD in terms of rule 24 and he was aware of the CMD. The tribunal proceeded with the CMD in the respondent's absence in terms of rule 29 as the tribunal was satisfied it was fair to do so.

4. The tribunal had before it the following copy documents:

- (1) Application dated 2 December 2020.
- (2) Short assured tenancy agreement dated 1 July 2015.
- (3) AT5 dated 30 June 2015.
- (4) Notice to quit dated 6 May 2020 with ish date of 30 November 2020.
- (5) S33 notice dated 6 May 2020.
- (6) S11 notice.
- (7) Rent statement dated 8 July 2020.
- (8) Royal Mail track and trace documentation dated 11 May 2020.
- (9) Answers for the respondent.
- (10) Letter to respondent from the Civil Legal Assistance Office dated 18 January 2021.
- (11) Letter from applicant's agents to respondent dated 12 November 2020.
- (12) Emails from respondent to the tribunal chamber dated 11 February 2020, 28 February 2021, 25 March 2021, 26 March 2021
- (13) Death certificate dated 3 February 2021.

Discussion

5. Mr Kingdon submitted that the applicant was seeking an order for eviction on the basis that the short assured tenancy had expired and it was reasonable in all of the circumstances for the eviction to be granted. He submitted that the eviction application was made due to the arrears of rent and a background of the respondent being persistently late in the payment of rent. He stated that his firm acted as letting agents and since 2015, 81 letters had been sent to the respondent in connection with his rent account. They ranged from a first stage letter, inquiring if the rent was late due to an oversight, to a final stage letter threatening proceedings. He was aware that the respondent was currently unable to work due to him being an asylum seeker. It was his submission that when the tenancy agreement was first drawn up, the respondent would have been in employment or a guarantor would have been required. It was his understanding that all of the rental payments had come direct from the respondent, either in cash or by bank transfer. There had never been any direct payment of benefits and he had no information to suggest that the respondent was entitled to benefits.

6. It was put to Mr Kingdon that that the respondent stated in his answers that he had tried to pay rent and this had been refused. This was not accepted. Mr Kingdon acknowledged that his office was currently shut because of the pandemic and cash payments could not be made. His firm had however written to the respondent and given him the bank details so that he could pay the money directly into his firm's account or make a bank transfer. The respondent had made many previous payments by standing order and was aware of the methods for making payment.
7. Mr Kingdon submitted that there had been an agreed reduction in rent from £650 to £475 in 2018. It was his submission that the property was unsuitable for the respondent given his current circumstances. All of the correspondence sent from the applicant's solicitors to the respondent has details of agencies to contact to seek help with housing matters. There was no prospect that he would be able to pay the rent in the foreseeable future and his client was substantially out of pocket. The applicant lives overseas and has one other rental property. He had stated his intention to return to Scotland but was currently prevented from doing so by the pandemic.
8. Mr Kingdon submitted that there was no prospect of the eviction being enforced at the current time and no rent had been paid since March 2020, over one year ago. He submitted that an eviction order was reasonable in all of the circumstances.

9. Findings in fact

- The applicant is the owner of the property.
- The parties entered into a short assured tenancy on 1 July 2015 for let of the property for the initial period of 1 July 2015 until 20 June 2016 and month to month thereafter.
- The applicant's agents served a valid notice to quit and s33 notice on the respondent on 6 May 2020.
- The short assured tenancy has reached its end.
- Tacit relocation is not operating.
- The agreed rent was £650 per month.
- This was reduced by agreement in March 2018 to £475 per month.
- No rent has been paid since March 2020.
- As at 12 November 2020, the arrears had increased to £3200.
- The current rent arrears are in the region of £4550.
- It is reasonable in all of the circumstances that the order be granted.

Reasons

10. The Coronavirus Act 2020 made significant changes to the requirements of a rule 66 application. The notice period for the s33 notice was extended from 2 months to 6 months (schedule 1 paragraph 4(3)). Further, the tribunal may

make an order for eviction if it is satisfied that it is reasonable to so. The tribunal is satisfied that the correct 6 month notice period has been given to the respondent. There are substantial arrears of rent and there is no prospect of the respondent making any payment towards the arrears or indeed paying any further rent. The applicant understands that the respondent is seeking asylum and is not currently able to work. This does not appear to have been the case some 6 years ago when the tenancy agreement was entered into. The applicant made a reduction in the rental payment in 2018 and his agents have tried to signpost the respondent to an agency that can help. The respondent sought legal advice from the Civil Legal Assistance office in January 2021 and their letter of 18 January 2021 has been lodged. This letter also seeks to signpost the respondent to seek assistance of an immigration solicitor and help with temporary accommodation. In all of the circumstances the tribunal is satisfied that it is reasonable to grant the 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.

L. Ward

26 March 2021

Lesley A Ward Legal Member

Date