



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/19/3496 and EV/19/0231

Re: Property at 25 Greenburn Terrace, Bucksburn, Aberdeen, AB21 9AX (“the Property”)

Parties:

Mr Michael Stark, 370 Auchmill Road, Bucksburn, Aberdeen, AB21 9NL (“the Applicant”)

Mr Connor Brown, 25 Greenburn Terrace, Bucksburn, Aberdeen, AB21 9AX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)
Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession.

1 By application dated 30th October 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Notice to Leave dated 16th September 2019 stating that proceedings for possession will commence no earlier than 17th October 2019 and citing ground 11, together with Royal Mail track and trace receipt;
- (ii) Minute of Lease dated 30th June 2018;
- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council;

- (iv) Text messaging and correspondence between the Applicant and Respondent; and
 - (v) Excerpts from the Respondent's Facebook account.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 17th January 2020.
- 3 On 13th December 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.
- 4 On 6th January 2020 the Applicant submitted a second Notice to Leave by email to the Tribunal. The said Notice to Leave had been served on the Respondent citing ground 12. The Applicant advised that the Respondent was in rent arrears and a second application for recovery of payment of those arrears had been submitted to the Tribunal.

The Case Management Discussion (EV/19/3496)

- 5 The Case Management Discussion took place on 17th January 2020. Mr Stark was present and accompanied by his wife Maria Stark as a supporter. Mr Brown was present.
- 4 The Legal Member explained the purpose of the Case Management Discussion. As a preliminary point she noted that Mr Stark had submitted a second Notice to Leave on the grounds of rent arrears. She explained that the Tribunal rules required that parties give fourteen days notice of any amendment to introduce new issues. Accordingly she would be unable to consider a request for amendment at this stage. Mr Stark advised that he wished to proceed with the application in its current form.
- 6 The Legal Member then noted the issues to be resolved by the Tribunal as:-
- 6.1 Whether Mr Stark gave Mr Brown verbal permission to keep a dog within the property, and whether this supercedes the terms of the written tenancy agreement between the parties, namely Clause 43;
 - 6.2 If the Tribunal finds that Mr Brown is in breach of his tenancy obligations, whether it is reasonable to make an eviction order.

The Legal Member further directed Mr Brown to put in a response to the amendment request and to the rent arrears ground within fourteen days of the date of the Case Management Discussion.

- 7 On 22 January 2020 the Applicant submitted a second application to the Tribunal. Said application was accepted by the Legal Member with delegated powers of the Chamber President on 27 February 2020 under case reference EV/20/0231. Said application was conjoined with application EV/19/3496 and a Case Management Discussion set down for the hearing date of 16 March 2020.
- 8 On 28 February 2020 the Applicant submitted the following documentation:-
- 8.1 Witness Statement from Marion Gerrard.
- 8.2 Document noting access issues since the Case Management Discussion. In summary the Applicant advised that a set of keys for the property had been left on his doorstep on 12 February 2020 which had led him to attend the property to ascertain whether the Respondent was still in occupation. The SSPCA had been called and had forced access to the property, where the Respondent's dog was found, in a malnourished condition. Further a dead chinchilla was recovered. Both were removed by the SSPCA. The Applicant had secured the property. The Respondent had then accused the Applicant by telephone of unlawful eviction and had instructed a further lock change without the consent of the Applicant.
- 8.3 Photographic evidence.
- 9 On 28 February 2020, a Sheriff Officers report in relation to the service of application EV/20/2031 confirmed that the Respondent had obtained alternative accommodation at 10 Richmond Terrace, Aberdeen, AB25 2RL. Service was effected at that address.

The Hearing (EV/19/3496) and Case Management Discussion (EV/20/0231)

- 10 The Hearing and Case Management Discussion in the two conjoined applications took place on 16 March 2020. Mr Stark was present and accompanied by his wife Maria Stark. Mr Brown was present.
- 11 The Tribunal noted the terms of the Sheriff Officer report in respect of EV/20/0231 which indicated that the Respondent had now obtained alternative accommodation. The Respondent confirmed this to be the case. However he advised that he still had possessions to remove from the Property and would require access in order to recover these. He clarified for the Tribunal that he did not intend on returning to the property and was no longer challenging the eviction applications, but was seeking some time to remove his remaining belongings.
- 12 The Applicant confirmed that he had not yet been able to recover possession of the property. He explained that the Respondent had been given plenty of

time to remove items. The Applicant understood he had been out of the property since 17th February 2020. He should have removed everything he required by now. The Respondent explained that he had other priorities to deal with, and there had been a breakdown in communication between himself and family members that had led to further delay. The Tribunal agreed that the Respondent would have until the 27th March 2020 to remove his remaining items.

Reasons for Decision

- 13 The Tribunal was satisfied that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted the Respondent's position, in that he had obtained alternative accommodation and was not seeking to return to the tenancy.
- 14 The Tribunal was satisfied that the requirements of the Private Housing (Tenancies) (Scotland) Act 2016 had been met in that a valid Notice to Leave had been served on the Respondent in both applications. Furthermore the Tribunal was cognisant of the fact that the Respondent no longer wished to continue his tenancy at 25 Greenburn Terrace, and had in fact obtained alternative accommodation. There was therefore no prejudice to him in the granting of the order. The Tribunal further noted the Applicant would require the protection of the order to formally repossess the property.
- 15 Given that the two applications had been conjoined, the Tribunal considered it would be appropriate to issue one order on the basis that both related to the same tenancy and the same parties. The Tribunal was conscious it could not make two orders for repossession.
- 16 The Tribunal therefore made an order for repossession of the Property with an effective date of 27 March 2020.

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.

Mrs Ruth O'Hare

Legal Member/Chair

17 March 2020

Date

