



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/19/1038

Re: Property at 2/L, 583 South Road, Dundee, DD2 4LY (“the Property”)

Parties:

Ask Property, C/O Lara Letting, 1 Stirling Street, Dundee, DD3 6PJ (“the Applicant”)

Mr Ian Andrews, 2/L, 583 South Road, Dundee, DD2 4LY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 2 April 2019 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 (“the 2016 Act”). The applicant provided the Tribunal with a copy of the Tenancy agreement, Notice to Leave, Section 11 Notice and Rent Statement.
2. By Notice of Acceptance dated 23 May 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was given to the applicant’s representatives ASK Property, Dundee by post on 28 May 2019 and to the Respondent by Sheriff Officers on 5 June 2019.

4. No further written representations were received from the Applicant or its representatives in advance of the Case Management discussion. The respondent made no written representations in advance of the Case Management Discussion

The Case Management Discussion.

5. A Case Management Discussion was held at Caledonian House Dundee on 10 July 2019. The applicant was represented by Ms Tara Javed supported by Mr Alec Campbell. The Respondent did not attend nor was he represented. The tribunal was satisfied that proper intimation of the Case Management Discussion had been given to the Respondent by Sheriff Officers and in accordance with Rule 29 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") the Tribunal determined to proceed in his absence.
6. Ms Javed confirmed that the parties had entered into a Private Residential Tenancy Agreement that commenced on 2 March 2018 at a monthly rent of £465.00. She referred the Tribunal to the copy agreement submitted with the application. Ms Javed advised the Tribunal that at the date of the application the Respondent had accrued rent arrears of £4780.00 and referred the Tribunal to the Rent Statement submitted with the application. Ms Javed went on to say that at the date of the Case Management Discussion the arrears had risen to £7105.00 as the Respondent had failed to make any payment of rent since May 2018.
7. Ms Javed explained to the Tribunal that she had deleted the email sent to the respondent along with the Notice to leave as she had gone over her storage limit and had not realised that she might need to produce a copy to the Tribunal. Ms Javed confirmed that the Notice to Leave had been prepared by herself and the Landlord's digital signature added by her on 22 February 2019 and that she had personally emailed the document to the Respondent that same day. She was in no doubt about that.
8. Ms Javed confirmed that she had sent a Section 11 Notice to Dundee City Council at the commencement of the proceedings and as the terms of Ground 12 of Schedule 3 of the 2016 Act had been met sought an order for the eviction of the Respondent.

Findings in Fact

9. The parties entered into a Private Residential Tenancy Agreement that commenced on 2 March 2019 at a monthly rent of £465.00
10. The Respondent has failed to make any payment of rent since 11 May 2018. The arrears of rent at 22 February 2019 were £4780.00 and were £7105.00 at 1 July 2019.

11. A Notice to Leave was sent by email to the Respondent on 22 February 2019 and the Respondent would be deemed to have received it on 24 February 2019.
12. Intimation of these proceedings was given to Dundee City Council by the Applicant prior to the application being made to the Tribunal.

Reasons for Decision

13. The Tribunal was satisfied that the Respondent has failed to make any payment of rent since 11 May 2018. He had therefore been in arrears of rent (by any amount) for a continuous period of three or more months as at the date of the Case Management Discussion and there was an amount greater than an amount which would be payable as one month's rent due on that day. The Tribunal was therefore satisfied that subject to the Notice to Leave having been properly intimated to the Respondent the terms of Ground 12 of Schedule 3 of the 2016 Act had been met.
14. Although the Applicant's representative was unable to produce a copy of the email sent to the Respondent along with the Notice to Leave the Tribunal was satisfied from her evidence that the Notice to Leave had been sent by email personally by her on 22 February 2019. The Tribunal also took note of the fact that the Respondent had not challenged the validity of the Notice nor had he chosen to attend the Case Management Discussion to oppose the application. The Tribunal was therefore satisfied that in the balance of probabilities the Notice to Leave had been validly served on the Respondent.
15. The Tribunal was satisfied that the Section 11 Notice had been sent to Dundee City Council in advance of these proceedings being raised.
16. Taking everything into account the Tribunal was satisfied that the application should be granted.

Decision

17. The Tribunal finds that the Applicant is entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.

G Harding

Legal Member/Chair

10 July 2019
Date