



Decision 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/22/2580

Re: Property at 13 Flat 2, Stobbie Place, Edinburgh, EH16 4YS (“the Property”)

Parties:

Edinburgh Living LLP, Waverly Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)

Mr Darren Walls, 13 Flat 2, Stobbie Place, Edinburgh, EH16 4YS (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. A case management discussion (“CMD”) took place on 3 November 2022. Reference is made to the Note and Notice of Direction issued following that CMD.
3. On 14 December 2022, the Tribunal received further documents from the Applicant’s representative in support of the application. Those documents included an update rent statement, rent increase notices and a copy of a letter regarding the Scottish Government’s Tenant Hardship Loan. These documents were accompanied by an application to amend the claim form. The Tribunal

issued a copy of the amendment application and documents to the Respondent on 15 December 2022.

The case management discussion

4. The CMD took place by conference call. The Applicant was represented by Mr Gordon. The Respondent did not join the conference call and the discussion proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/22/2581. The Applicant's representative explained that he received an email from the Respondent on 5 February 2023 and he forwarded a copy of that email to the Tribunal members for consideration. The Applicant's representative advised that the email did not change the Applicant's position which is that an order for eviction should be granted. The level of rent arrears brought out in the updated rent statement is £19,444. As at the date of the amendment application, the arrears had increased to £20,004 and as at 31 January 2023 the arrears increased to £20,564. The Respondent is believed to live alone at the property. He has made only 1 payment of rent since he moved into the property in December 2019. It was submitted that it was reasonable in all of the circumstances to grant an order for eviction. Given the lack of engagement from the Respondent and the substantial level of rent arrears, the Applicant moved to dispense with the charge for removing in terms of section 216(4) of the Bankruptcy and Diligence etc Scotland Act 2007.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 20 December 2019.
6. The Applicant served the Notice to Leave on the Respondent by email on 23 May 2022.
7. As at the date of the Notice served, the Respondent was in arrears of rent for more than 3 consecutive months.
8. As at the date of this case management discussion, the Respondent was in arrears of rent for more than 3 consecutive months.

Reason for Decision

9. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to participate in the discussion and did not lodge any written submissions. The Tribunal took account of the Respondent's circumstances as known to the Applicant. The Tribunal also took account of the email sent by the Respondent to the Applicant's representative on 5 February 2023. It was noted that the Respondent received a tenant hardship loan and did not pass that payment on

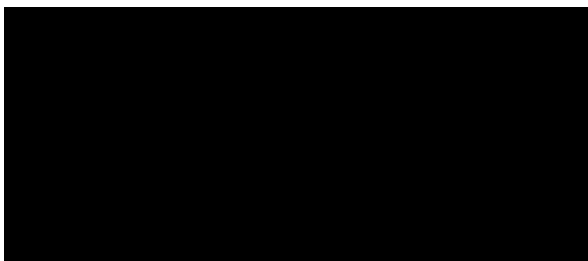
to the Applicant. The updated rent statement lodged demonstrated that there are significant arrears of rent. The Respondent has lived in the property for more than 3 years and during that time has paid rent only once. There was nothing to indicate that the Respondent disputed the level of rent arrears shown on the updated rent statement. The Tribunal was satisfied that the ground for eviction was established and that it was reasonable to grant the order evicting the Respondent from the property. In light of the information contained in the email from the Respondent of 5 February 2023, the Tribunal was not persuaded that it was reasonable to dispense with the charge for removing.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

6 February 2023

Date