



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 Act”)

Chamber Ref: FTS/HPC/EV/19/0855

Re: Property at 2E Buchanan Drive, Causewayhead, Stirling, FK9 5HF (“the Property”)

Parties:

Mr Benedict Genese, 1 Sunnyside, Dunblane, FK15 9HA (“the Applicant”)

Ms Rosalind Houston, 2E Buchanan Drive, Causewayhead, Stirling, FK9 5HE (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order for Possession be granted

Background

1. By application received dated 14 March 2019 (“the Application”), the Applicant made an application to the Tribunal for a possession order in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). A copy of the tenancy agreement between the parties and a summary of rent due and owing were lodged as part of the Application.
2. On 21 March 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 13 June 2019 at 14.00 at STEP Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP. The CMD was intimated to both parties.

Case Management Discussion

3. The CMD took place on 13 June 2019 at 14.00 at the said STEP Stirling Enterprise Park, John Player Building. The Applicant and the Respondent were both present and each was accompanied by a supporter.

Summary of Discussion

4. I explained to the parties the role of with reference to Rule 11 of the Rules.
5. This matter was heard along with another application with the same parties being FTS/HPC/CV/19/0856. In respect of that application, the Respondent advised me that, on the advice of Stirling Council officers, Andrew Paterson and Cathy Boyle, she was withholding rent because of the "illegality" of the tenancy. The Respondent advised me that she had not paid the rent due since July 2018 on the advice of those Council officers that it was illegal to make cash payments and, that as the Applicant was not a registered landlord, it was illegal to pay rent to him. Further, she advised that she had been told by those Council officers not to pay rent as the Applicant's mortgage lender had not consented to the Property being let and were in the process of repossessioning the Property. She confirmed to me that she owed the rent.
6. In respect of the Application, the Respondent advised me that she left the Property on 16 April 2019 as she has been re-housed by Stirling Council and that she does not intend to return to the Property. The Respondent declined to provide her current address.
7. The Applicant advised me that he was not aware that Respondent advised me that she left the Property and confirmed that he sought an Order for possession.
8. The Respondent advised me that she did not care if an Order was granted as he had no intention of returning and so did not oppose the Application.

Findings in Fact

9. From the Application and the CMD, I found that a tenancy agreement had existed between the Parties and that a Notice to Leave in the correct statutory format had been served on the Respondents by the Applicant. I found that, by the Respondent's own admission, at the beginning of the day on which the Tribunal first considered the Application an amount of rent of more than an amount equal to or greater than one month's rent and rent arrears of more than three consecutive months due and that at the date of the CMD the rent due and owing by the Respondents is £3,900.00. I found that the notice in terms of Section 56 of the Act had been properly intimated to the relevant local authority. Accordingly, I found that the statutory and provisions required Parties had been satisfied.

Decision and Reasons for Decision

10. Having found that the correct statutory procedure had been followed and that an eviction ground in terms of Paragraph 12 of Schedule 3 to the Act is satisfied, I had regard to Section 51 of the Act which states that “the First-tier Tribunal is to issue an order if one of the grounds in schedule 3 applies”.
11. I then had regard to Rule 17(4) of the Rules which state that the Tribunal “may do anything at a case management discussion which it may do at a hearing, including make a decision” and, accordingly, I determined to grant an Order for possession.

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.

Karen Moore

Legal Member/Chair

Date

13 June 2019