

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/21/2342

Property : 8 Burns Crescent, Harthill, Greenrigg, West Lothian ML7 5QY("Property")

Parties:

Cesar and Cynthia Manlapaz, 33 Moredunvale Loan Edinburgh EH17 7RJ ("Applicants")

Shirley Robertson, 8 Burns Crescent, Harthill, Greenrigg, West Lothian ML7 5QY ("Respondent")

Tribunal Members:

**Joan Devine (Legal Member)
Sandra Brydon (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: an "Assured Shorthold Tenancy Agreement" dated 27 June 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 23 March 2021 ("Notice to Leave"); copy handwritten notes from two individuals stating they had witnessed delivery of the Notice to Leave on 23 March 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with royal mail certificate of posting dated 22 September 2021; statement of rent arrears and sheriff officer's execution of service certifying service of the Application on 2 November 2021.

Case Management Discussion

A case management discussion took place before the Tribunal on 7 December 2021 by teleconference. The Applicants were in attendance. There was no appearance on behalf of the Respondent.

The Tribunal noted that the form of tenancy agreement produced by the Applicants was not in accordance with the form of private residential tenancy prescribed in terms of the Act. The

Applicants told the Tribunal that they had asked the Respondent to sign a tenancy agreement in that format but she had failed to do so.

The Tribunal noted that the Notice to Leave had been delivered by hand. The Applicants told the Tribunal that they had sent letters to the Respondent which had been returned although the Respondent continued to live in the Property. To be sure of service Mrs Manlapaz delivered the Notice to Leave to the Respondent on 23 March 2021 in the presence of two witnesses, Hazel Ilagen and Melba Cosa.

The Tribunal asked the Applicants about contact they had made with the Respondent regarding the arrears. They said that they wrote to her but the letters were either ignored or returned to them. They tried contacting her by telephone and the Respondent asked why she was being asked to pay the rent. She said that she had paid the rent but the Applicants said this was not the case. The Tribunal noted that the Applicants had obtained a payment order against the Respondent for payment of £5,550 dated 27 May 2021. The Applicants said that the Respondent did not attend the hearing at which the order was granted and that no payment had been made towards the sum due.

The Applicants said that they understood that the Respondent continued to live in the Property. They understood that she lived alone and was in employment. The Applicants said that they were both working. They found the current situation stressful. They required to continue to pay the mortgage on the Property despite receiving no rental income.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced on 27 June 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 23 March 2021.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 23 September 2021.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 22 September 2021.
5. The Respondent had failed to pay the rent for the period 28 August 2020 to 28 September 2021.
6. Notice of the date of the case management discussion had been given to the Respondent on 2 November 2021.

Reasons for the Decision

The Tribunal considered the form of the tenancy agreement produced by the Applicants. The Tribunal noted the meaning of "private residential tenancy " in section 1 of the Act and also

that writing was not required to constitute a private residential tenancy in terms of section 3 of the Act. The Parties had agreed to the essentials of a lease being "the parties, the property, the price and the period". In the circumstances the Tribunal was content that a tenancy agreement had been created.

The Tribunal considered the method of service of the Notice to Leave. In terms of section 50 of the Act the requirement was that the notice to leave should be received by the tenant. The Tribunal was satisfied that the Notice to Leave had been served.

The Tribunal noted the schedule of rent arrears which showed rent had not been paid for the period 28 August 2020 to 28 September 2021 and that letters had been issued to the Respondent regarding the arrears dated 29 September, 6 October, 3 November and 29 December 2020 and on 29 January, 28 February, 6 April, 28 June, 28 July and 30 August 2021. In these letters the Applicants supplied their bank details to allow payment to be made and urged the Respondent to contact them.

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which (as amended by the Coronavirus (Scotland) Act 2020) states :

- (1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.....*
- (3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if -*
 - (a) *at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant –*
 - (i) *is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and*
 - (ii) *has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and*
 - (b) *the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

The Tribunal considered the statement of rent arrears and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicants, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.

**Joan Devine
Legal Member**

Date : 7 December 2021