



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/19/3312

Re: Property at Flat 17, 6 The Cooperage, Commercial Wharf, Edinburgh, EH6 6LA (“the Property”)

Parties:

Mrs Ann O’Toole, 33/3 Mertoun Place, Edinburgh, EH11 1JX (“the Applicant”)

Mr Neil Young and Ms Linda Davidson, Flat 17, 6 The Cooperage, Commercial Wharf, Edinburgh, EH6 6LA (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 15 October 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property.

2. On 31 October 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 20 November 2019, the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 11 December 2019. The Tribunal advised parties on 20 November 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 23 December 2019. This paperwork was served on the Respondents by Douglas Llewellyn, Sheriff Officer, Dunbar on 22 November 2019 and the certificates of execution of service were received by the Tribunal administration.
4. The Respondents did not make any written representations by 11 December 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 23 December 2019. The Applicant was personally present. The Respondents did not appear and were not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondents signed and dated 11 December 2017, various banks statements, a Notice to Leave dated 10 September 2019 together with Sheriff Officers’ Certificates of Execution of Service dated 11 September 2019, an email dated 9 September 2019, a Recoded Delivery slip dated 11 October 2019 with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to the Edinburgh City Council.
7. The Applicant moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”).
8. The Tribunal noted that the Applicant and the Respondents entered into a Private Residential Tenancy with a start date 11 December 2017 in relation to the Property. In terms of Clause 7 of the Private Residential Tenancy Agreement, the Respondents agreed to pay monthly rent of £515. The Applicant explained that when the Respondents had first applied for the flat Ms Davidson was known to her as Ms Munro, but that she had signed the tenancy agreement as Ms Davidson and always knew her as Linda Davidson. With reference to the bank statements, the Applicant explained the Respondents had not made a payment of rent into her bank account since 12

November 2018. She explained that the Respondents had set up a company to run a pub called Fox's, but had got into some trouble with Sky TV as they were did not have a licence from Sky. She understood the Respondents had been taken to court by Sky TV. The Respondents had since dissolved their company and no longer ran Fox's. Arrears had increased to £6695 being 13 months arrears. She had emailed and called the Respondents who ignored her.

9. The Tribunal noted the Notice to Leave under Section 50(1) and Ground 12 of Schedule 3 of the 2016 Act dated 10 September 2019 addressed to the Respondents and served on the Respondents by Sheriff Officers on 11 September 2019. The Tribunal also noted that the Applicant had sent a copy of the Notice to Leave by email on 9 September 2019 to the email address set out in Clause 1 of the tenancy agreement. In terms of Clause 3 of the tenancy agreement parties had agreed that such a notice could be served by email at that email address. The Notice to Leave requested the Respondents leave the Property by 15 October 2019.
10. To the best of the Applicant's knowledge the Respondents still lived at the Property. She had last visited round about the beginning of September 2019 when she noted a light was on. The requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the Edinburgh City Council on 11 October 2019. The Application sought an order for eviction under Ground 12 of Schedule 3 of the 2016 Act on the basis the Respondents had been breached the terms of their tenancy agreement by being in rent arrears.

Findings in Fact

11. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement starting on 11 December 2017 in relation to the Property. In terms of Clause 7 of that tenancy agreement, the Respondents agreed to pay the Applicant a calendar monthly rent of £515 due on 11th of each month.
12. The Respondents have paid no rent since 12 November 2018. The arrears are £6695 being 13 months in arrears. The Respondents are in breach of Clause 7 of the tenancy agreement by not paying rent.
13. The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.
14. On 10 September 2019, the Applicant served a Notice to Leave on the Respondents by way of Sheriff Officers on 11 September 2019 requesting that they remove from the Property by 15 October 2019. The Respondents are still resident in the Property.

15. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Edinburgh City Council on 11 October 2019.

Reasons for Decision

16. The Applicant provided evidence of non-payment of rent in the form of her bank statements. The Tribunal was satisfied the Respondents had an obligation to pay rent of £515 and had failed to do so since 12 November 2018. The Tribunal was satisfied on the basis of the supporting oral submissions made on behalf of the Applicant that the Respondents have been in arrears of rent for over three consecutive months and are in excess of over a month's arrears. The Tribunal was satisfied on the basis of the Applicant's oral submissions that the Respondents were not entitled to Universal Credit or any other benefit and that the arrears had not accrued due to a delay or failure in payment of any benefit. The Respondents were accordingly in breach of Clause 7 of the tenancy agreement. In the circumstances, the Notice to Leave having been served and Ground 12 of Schedule 3 being met in relation to the arrears of rent, the Applicant is entitled to repossess the Property in terms of Section 51 of the Private Housing(Tenancies) (Scotland) Act 2016.

Decision

17. The Tribunal granted the order for repossession.

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.

S Evans

Legal Member/Chair

23 December 2019.

Date