



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/22/0081

Re: Property at 3 Mansefield House, Annan Road, Gretna, DG16 5DQ (“the Property”)

Parties:

Dumfries and Galloway Homes Limited, 27 Huntingdon, Moffat Road, Dumfries, DG1 1NN (“the Applicant”)

Mr Richard Leys, sometime of 3 Mansefield House, Annan Road, Gretna, DG16 5DQ and whose current address is unknown (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Ms Sandra Brydon (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the tenant in respect of the Property.

Background

1. On 2nd December 2021, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. The current address of the Respondent is unknown and service was effected by advertisement.
3. No representations were received from the Respondent.
4. A case management discussion was held on 11th May 2022. It was held by audio conferencing.

The case management discussion

5. There was no appearance by the Respondent.
6. Ms Kirsty Donnelly, solicitor, represented the Applicant.
7. The Legal Member explained the purpose of a case management discussion. Ms Donnelly invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 10, Part 3 of Schedule 3 of the 2016 Act have been met.

8. Findings in Fact

- (i) Dumfries and Galloway Homes Ltd and the Respondent entered into a private residential tenancy agreement in respect of the Property on 2nd June 2020
- (ii) The tenancy commenced on 2nd June 2020.
- (iii) The monthly rent due under the private residential tenancy is £434.33.
- (iv) The rent arrears currently due are £13,320.82.

9. Finding in Fact and Law

The Property is not being occupied by the Respondent as his only or principal home.

10. Documents before Tribunal

- (i) Private residential tenancy agreement dated 2ND June 2020.
- (ii) Copy Notice to Leave and email to the Respondent both dated 8th September 2021.
- (iii) Copy Section 11 intimation to local authority dated 23rd November 2021.
- (iv) Letter from Stirling Park, Sheriff Officers dated 11th February 2022
- (v) Copies of photograph of an external door with a Notice of Abandonment dated 27th May 2021 attached to it.
- (vi) Photographs of external door showing mail in its letter box.
- (vii) Tribunal's Certificate of Service by Advertisement dated 11th May 2022 showing date of advertisement to be 31st March 2022.

11. The Law

Section 51 of the 2016 Act:

First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to 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.

(2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

(3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

(4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

Ground 10, Part 3 of Schedule 3 of the 2016 Act

Not occupying let property

10 (1) *It is an eviction ground that the tenant is not occupying the let property as the tenant's home.*

(2) *The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—*

(a) *the let property is not being occupied as the only or principal home of—*

(i) *the tenant, or*

(ii) *a person to whom a sub-tenancy of the let property has been lawfully granted, and*

(b) *the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.*

(3) *In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).*

Schedule 1 of the Coronavirus (Scotland) Act 2020

1 (1) *The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

(2) *Section 51 (2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

(3) *Schedule 3 (eviction grounds) has effect as if—*

(h) *in paragraph 10 (2) (not occupying let property)—*

(i) *in the opening words, for the word "must" there were substituted " may ",*

(ii) after paragraph (a), the word “and” were repealed,

(iii) after paragraph (b) there were inserted “, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”

Representations and Discussion

12. The tribunal noted the terms of the Notice to Leave which was dated 6th September 2021 and which stated that proceedings would not commence prior to 9th October 2021. Ms Donnelly said that this had been emailed to the Respondent and that her clients had received no answer from him. She referred the tribunal to the terms of the private residential tenancy agreement which allowed for service of notices by email.
13. Ms Donnelly said that the Applicant believes that the Respondent abandoned the Property early in 2021. She said that members of the Applicant’s staff checked the property on more than one occasion and formed that view. She said that it is understood that the Respondent left the Property in early 2021 to live with his girlfriend. She said that there is no forwarding address for him.
14. The tribunal was referred to the letter from Stirling Park, sheriff officers relating to the Property dated 11th February 2022 which stated *“On 10th February 2022, our officer called to the above property and found no names displayed on the door. There was no response from within and the external mailbox was overflowing with mail. An abandonment notice was affixed to the door and was issued by the landlord’s agent G.M. Thomson & Co, 35 Buccleuch Street, Dumfries DG1 2AB. The notice was dated 27th May 2021 and designed the subject to be Richard Leys Milne.....Our officer spoke with a neighbour at 1 Annan Road who advised that they had only moved into the property a few weeks ago. They confirmed that number 3 Annan Road was empty and had seen no persons at the address.”*
15. Ms Donnelly referred the tribunal to photographs which had been lodged. She referred to one which showed an external door upon which had been fixed a document entitled “Notice of Abandonment” which was dated 27th May 2021 and was stated to be from agents acting on behalf of the Applicant. The notice states that it is considered that the Respondent is no longer residing in the

property and inviting him to make contact with the Applicant's agents to advise if that is not the case.

16. Ms Donnelly referred the tribunal to other photographs showing the Property's mailbox stuffed with mail. Ms Donnelly said that there had been no contact from the Respondent whatsoever and that only one payment of rent had been made since the commencement of the tenancy. She said that the current level of rent arrears is £13,320.82.

Submissions

17. Ms Donnelly submitted that there was no requirement for a Hearing. She said that the tribunal had before it sufficient information to make a determination. She said that the requirements of Ground 10 were met and that the Respondent had left the Property and that he was no longer living in it. She referred the tribunal to the documents and copy photographs which had been lodged.

18. Ms Donnelly said that it would be reasonable to grant the order of eviction. She said that the level of rent arrears was such that it is reasonable for the Applicant to recover the Property. She said that there is a shortage of rental properties and that it is reasonable for the Applicant to recover the Property so that it can be made available on the rental market and occupied as a home.

Decision

19. The tribunal was satisfied that appropriate notice had been given to the Respondent in the Notice to Leave. The appropriate period of notice is twenty eight days. The application was made after the expiry of the notice period.

20. The tribunal was satisfied that appropriate notice had been given to the local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

21. The tribunal considered that there was no requirement for a Hearing to be held and that it had sufficient information to determine the application.

22. The tribunal accepted that Ground 10 was met and that the Respondent was no longer residing in the Property. The details in the application, the documents before the tribunal, the representations of Ms Donnelly and the photographs were persuasive.
23. The tribunal had no evidence that the Respondent's failure to occupy the Property was as a result of any breach of the Applicant's obligations as a landlord.
24. The tribunal accepted the submissions of Ms Donnelly with regard to the reasonableness of making the order of eviction. It was reasonable for the Applicant to recover the Property and, since the tribunal had accepted that the Respondent had abandoned the Property, it was not unreasonable for the tenancy to be brought to an end.

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.

**Martin J. McAllister
Legal Member
11th May 2022**