



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2102

Re: Property at 45/12 Westfield Avenue, Edinburgh, EH11 2TN (“the Property”)

Parties:

Lowther Homes Ltd, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Mr Thomas Murray, 45/12 Westfield Avenue, Edinburgh, EH11 2TN (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

Applicant: Represented by Miss H Swanson, Messrs T. C. Young, Solicitors, Edinburgh

Respondent: Not represented

Decision (in absence of the Respondent)

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

BACKGROUND

1. On 6 July 2015 a tenancy agreement in relation to the Property was entered in to by Dunedin Canmore Enterprise Ltd and the Respondent. A notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 - had been served upon the Respondent prior to execution of the agreement. The Tenancy was, accordingly, as short assured tenancy in terms of the 1988 Act;
2. The landlord’s rights in relation to the Property were subsequently transferred to Dunedin Canmore Housing Ltd on 30 March 2017. On the same day, an agreement was entered in to between Dunedin Canmore Housing Ltd and the Applicant in terms of which the Applicant assumed the role and responsibilities of landlord in relation to the Property;

3. A notice to quit and a notice in terms of s19 of the 1988 Act (commonly referred to as a form AT6 – and a notice in terms of s33 of the 1988 Act were all served timeously on the Respondent. Service was effected by sheriff officer on 22nd February 2018;
4. The notice in terms of s19 of the 1988 Act indicated that proceedings may be raised on the basis of rent arrears in terms of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act;

THE HEARING/CASE MANAGEMENT DISCUSSION

5. The Applicant was legally represented at the Case Management Discussion. The Respondent did not attend and was not represented;
6. The Applicant's representative, considering that the necessary notices had been served in terms of the 1988 Act, moved the Tribunal to grant bon order for eviction;
7. Prior to granting that order, the Tribunal sought confirmation that the Applicant was not a Registered Social Landlord (RSL) in terms of the Housing Scotland Act 2010. If the Applicant is an RSL the Tribunal does not have jurisdiction to grant an order. Dunedin Canmore Enterprise Ltd is not an RSL. Dunedin Canmore Housing Ltd is an RSL. Lowther Homes Ltd is not an RSL. All three companies, however, are part of Wheatley Housing Group Ltd. Wheatley Housing Group Ltd is an RSL. It was confirmed that, while Wheatley Housing Group Ltd is an RSL that relates to only part of its activities. It has other subsidiaries and activities which are not RSL's. Lowther Homes Ltd is part of Wheatley Housing Group Ltd but is not an RSL. On that basis, the Tribunal considered that it did have jurisdiction to grant the order sought and proceeded to do so.

FINDINGS IN FACT

8. On 6 July 2015 a tenancy agreement in relation to the Property was entered in to by Dunedin Canmore Enterprise Ltd and the Respondent.
9. The landlord's rights in relation to the Property were subsequently transferred to Dunedin Canmore Housing Ltd on 30 March 2017. On the same day, an agreement was entered in to between Dunedin Canmore Housing Ltd and the Applicant in terms of which the Applicant assumed the role and responsibilities of landlord in relation to the Property;
10. On 22nd February 2018 a notice to quit, a notice in terms of s19 of the 1988 Act and a notice in terms of s33 of the 1988 Act were all served timeously on the Respondent;
11. As at the date of the application to the Tribunal (10 August 2018) the arrears of rent amounted to £1,778.05. A Case Management Discussion was held on 15th November 2018. On that date the case was continued until 4th January 2019 as the Respondent had agreed to make payments towards the rent and arrears at the rate of £300.00 per week. In the event that these payments were maintained it was likely that the Applicant would withdraw the application for an eviction order;
12. The agreed payments were not maintained;

13. As at 4th January 2019 the amount due by the Respondent to the Applicant amounted to not less than £778.05. This amount is less than three months rent;
14. The Respondent has persistently delayed in paying rent which was lawfully due;
15. Some rent due from the Respondent was unpaid on the date proceedings were begun and were in arrears at the date of service of the notice in terms of s19 of the 1988 Act;

REASONS FOR DECISION

16. The Respondent has been in arrears of rent for some time. As at the date of the application to the Tribunal the arrears were in excess of three months rent;
17. The Applicant was willing to, and did, enter in to an agreement with the Respondent to clear the arrears. Unfortunately this agreement was not adhered to by the Respondent;
18. As at the date of the Case Management Discussion on 4th January 2019, the arrears were less than three months rent. In those circumstances, the mandatory ground of eviction in terms of Ground 8 of Schedule 5 to the 1988 Act was not met;
19. In terms of grounds 11 and 12, however, both of which are discretionary grounds, having regard to the lengthy history of rent arrears and failure to make payment, taken together with the failure to adhere to an agreed arrangement to address the arrears, that tribunal determined that it was appropriate to grant an order for eviction;

DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 45/12 Westfield Avenue, Edinburgh, EH11 2TN and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 11 February 2019

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.

V Crawford

4 January 2019

Legal Member/Chair

Date