



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/22/3116

Property: 48 Whitehill Avenue, Kirkintilloch, East Dunbartonshire G66 2JL ("Property")

Parties:

Mark Jones, 9 Ivy Leaf Place, Lennoxton G66 7GJ ("Applicant")

Cairn Estate and Letting Agents Ltd, 34 Gibson Street, Glasgow G12 8NX ("Applicant's Representative")

Josephine McGregor, 48 Whitehill Avenue, Kirkintilloch, East Dunbartonshire G66 2JL ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 6 and 10 December 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 16 February 2022 ("NTL"); sheriff officer certificate of service of the Notice to Leave on 16 February 2022; email from the Applicant to Hasties Solicitors dated 8 February 2022 instructing them in the sale of the Property; copy emails from the Applicant's Representative to the Respondent regarding rent arrears; statement of rent arrears as at 14 February and 30 August 2022 notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 30 August 2022 and certificate of service by advertisement certifying service of the Application by

advertisement on the Service by Advertisement page of the website of the First-tier Tribunal for Scotland Housing and Property Chamber between 31 January and 7 March 2023.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 7 March 2023 by teleconference. Gemma Waters of the Applicant's Representative was in attendance. There was no appearance by the Respondent. In advance of the CMD the Applicant's Representative had lodged a statement of rent arrears as at 6 March 2023. The sum outstanding was £11,475.

Ms Waters told the Tribunal that she was contacted by the SSPCA in March 2022 about a cat apparently abandoned at the Property. She contacted the Respondent who said she was visiting her husband who was unwell. She said that her mother was meant to take care of the cat. Ms Waters explained that the SSPCA obtained a warrant to enter the Property and removed the cat. Ms Waters said that the last contact from the Respondent was on 4 April 2022 when she said she intended to return to the Property. Ms Waters said that rental payments had been erratic before then but ceased altogether. Ms Waters said that the arrears grew and in addition the Applicant wished to sell the Property in order to help finance his move into a property in Mugdock with his partner and their respective children. She said that the Applicant intended to sell the Property as soon as possible although he anticipated having to carry out some work to the Property including replacement of carpets. Ms Waters said that the Applicant had applied for a right of entry order as he had not had access to the Property for some time.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 6 and 10 December 2018 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by sheriff officer on 16 February 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 19 August 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 30 August 2022.

4. Notice of the date of the case management discussion had been given to the Respondent by advertisement between 31 January and 7 March 2023.
5. The Applicant holds title to the Property and is entitled to sell the Property.
6. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
7. The Respondent had failed to pay the rent in full for the period 20 July 2021 to 20 August 2022.
8. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.

Reasons for the Decision

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 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.

In the Application the Applicant stated that she sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy of an email from the Applicant to a solicitor instructing them in the sale of the Property. The Applicant's Representative had told the Tribunal that the Applicant would market the Property as soon as possible after obtaining vacant possession. In those circumstances the ground for eviction had been established.

The Applicant also sought recovery of possession of the Property on the basis set out in Ground 12 which states:

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statements of rent arrears produced and determined that this ground for eviction had also been established.

Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant 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.

J. Devine

**Joan Devine
Legal Member**

Date: 7 March 2023