



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/21/2522

Re: Property at Flat 1, 103 Eastwood Avenue, Shawlands, Glasgow, G41 3RT (“the Property”)

Parties:

Dr Wan Hock Cheah, 19 Glenpark Avenue, Glasgow, G46 7JE (“the Applicant”)

Mr Nicolae Gabriel Ostachi, Flat 1, 103 Eastwood Avenue, Shawlands, Glasgow, G41 3RT (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, comprising documents received by the Tribunal between 15 October 2021 and 17 June 2022 and accepted by the Tribunal on 1 July 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the Respondent has been in rent arrears for three or more consecutive months.

The Applicant stated that the Respondent had been carrying out work at the Property on his behalf and had been staying in a hotel. He had asked if he could move in to the Property on a temporary basis, paying £100 per week, as this was much cheaper than his hotel costs. The Applicant provided the Tribunal with a short document, dated 5 October 2020, in which the Respondent agreed to pay £100 per week while staying at the Property “on a temporary basis”. The Respondent had rented previously from the Applicant. That letting had not gone well, but the Respondent had persuaded the Applicant that he was a changed person and the Applicant had

agreed to the let of the Property. It was understood that this would be a temporary arrangement, but the Respondent had stayed on after completing the work and had asked the Applicant for a written agreement, as he required it in connection with his application for Universal Credit. The Applicant had drawn up a Lease, commencing on 20 December 2020 at a rent of £500 per month, although the Applicant stated that the rent continued at £100 per week. The Respondent had paid no rent at all since 5 June 2021.

The Applicant provided the Tribunal with a copy of a Notice to Leave dated 28 December 2021, with proof of delivery on 6 January 2022. It stated that an application to the Tribunal would not be made before 27 June 2022. On 1 July 2022, the Tribunal exercised its discretion under Section 52(4) of the Act to accept the application on 1 July 2022, 5 days prior to the expiry of the Notice period, which would have been 6 months after the date of service.

The Applicant provided the Tribunal with a copy of a letter of 17 February 2022, which satisfied The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, with proof of delivery on 18 February 2022.

On 2 August 2022, the Tribunal advised the Parties of the date and time of a Case management Discussion, and the Respondent was invited to make written representations by 23 August 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 15 September 2022. The Applicant was present and was accompanied by his wife. The Respondent was not present or represented. The Applicant confirmed that the Respondent was still living at the Property and that no rent had been paid since the date of the application. The Applicant advised the Tribunal that the Respondent had told him he would not be moving out without an Eviction Order. He had also, however, on several occasions, told the Applicant that he intended to move out, but had not then done so. The Applicant had provided the Tribunal with a copy Rent Book and the arrears presently stood at £6,600.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, for three or more consecutive months the tenant has been in arrears of rent and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal did not determine whether the draft Lease had been signed by the Parties or whether the short agreement of 5 October 2020 regulated the arrangement between the Parties. The Tribunal was, however, satisfied that the tenancy was a Private Residential Tenancy in terms of Section 1 of the Act, as it was

one under which the Property is let to an individual, the Respondent, who occupies the Property as his only or principal home and the tenancy is not one which Schedule 1 to the Act states cannot be a private residential tenancy.

The Tribunal noted that no rent whatsoever had been paid since 5 June 2021. The Applicant had told the Tribunal that he understands the Respondent is in receipt of Universal Credit, which includes a housing element, but he has chosen not to pay anything towards his rent for more than 15 months. The Respondent has not offered any explanation for non-payment of rent and did not make any written representations to the Tribunal. He also chose not to attend or be represented at the Case Management Discussion.

Having taken into account all the evidence before it, the Tribunal decided that Ground 12 of Schedule 3 to the Act applies and that it was reasonable to issue an Eviction Order.

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.

George Clark

Legal Member/Chair

15 September 2022

Date