



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/23/1142

Re: Property at 31 Broomhouse Street North, Edinburgh, EH11 3SB (“the Property”)

Parties:

Cameron Veitch, Strawberry Wood, East Saltoun, Pencaitland, Tranent, EH34 5DY (“the Applicant”)

John Byrne, 31 Broomhouse Street North, Edinburgh, EH11 3SB (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted in favour of the Applicant. 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 Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth 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. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016(‘the 2016 Act’). The Applicant seeks an eviction order.

2. A copy of the application was served on the Respondent on 21 July 2023 by Sheriff Officers. The Respondent was advised that a Case Management Hearing (“CMD”) would take place by teleconference call on 18 August 2023 at 2pm.
3. The Applicant lodged with the Tribunal the following documentation:-
 - Private Tenancy Agreement dated 10 July 2018 with a start date of 10 July 2018
 - Notice to Leave dated 21 February 2023 along with proof of service by Sheriff Officers.
 - Section 11 Notice and e-mail to Edinburgh City Council dated 7 April 2023
 - Sheriff Officers Occupancy report dated 11 April 2023
 - E-mail from Edinburgh City Council Revenue and Benefits Enquiries dated 19 May 2023

The Case Management Discussion (CMD)

4. The CMD took place by teleconference on 18 August 2023. The Applicant was not present and was represented by Mr Scott Runciman of Gilson Gray Solicitors. The Respondent was not present.
5. Mr Runciman said that he was inviting the Tribunal to grant an Order for Eviction under Ground 10 of Schedule 3 of the 2016 Act. He stated that the Respondent was not occupying the tenancy. He had not contested the application and had abandoned the Property and stopped paying any rent.
6. Mr Runciman said that the first notification that the Respondent was no longer residing at the Property had come from South West Children’s Services at Edinburgh Council at the end of 2022. The Respondent had left the Property and had abandoned his 4 children there. His ex-partner who is not a tenant had moved in to the Property to look after the children. Two of the children are believed to be over 16 and the remaining two are aged 13 and 10 years of age approximately.
7. Following upon that, Notice to Leave had been served.
8. Neighbours intimated to Sheriff Officers who carried out an Occupancy Report in April 2023 that the Respondent was no longer living at the Property and that his ex-partner and his children continued to reside there.
9. The Tribunal were referred to the terms of the e-mail lodged as a supporting document dated 19 May 2023, from Edinburgh City Council Revenue and Benefits Department, which states that the Respondent left the Property at the end of 2022, and that on that basis, Housing Benefits payments were stopped. The communication also states that Council Investigation Officers had made enquiries at the Property before this decision was made.

10. The Applicant has attempted to telephone the Respondent to discuss the situation. His phone has not been answered and has a long dialling tone when contact has been attempted indicating he is abroad. It is believed that he is now residing in Spain.
11. Prima facie there is no occupation by the Respondent of the Property.
12. Mr Runciman said that there were reports of various unsavoury people attending at the Property looking for the Respondent, and for money that he was due them.
13. Regarding the rent position, no rent has been paid now for 9 months, and at the date of the CMD, £15,210 is due in outstanding rent.
14. The Applicant is not financially able to sustain this type of loss. He has had a number of losses in the building market and the situation regarding the Property is causing him stress and anxiety on a daily basis.
15. Mr Runciman said that the Applicant had been in correspondence with the occupier of the Property and had text messages from her stating that she wishes to be re-homed by the local authority. She has also confirmed to the Applicant that the Respondent has left, "for good".

Findings in Fact

16. The Applicant is the landlord of the Property; the Respondent is the tenant of the Property in terms of a private tenancy agreement entered into between the parties.
17. The tenancy agreement had a commencement date of 10 July 2018.
18. The contractual monthly rental due in terms of the tenancy agreement is £1200 per calendar month.
19. The Respondent left the Property and has no longer been in occupation from the end of 2022.
20. A Notice to Leave dated 21 February 2023 was served on the Respondent by Sheriff Officers at the Property.
21. The Notice to Leave intimated that the Applicant was seeking recovery and possession of the Property on the ground that the Respondent was no longer occupying the let property. (Ground 10 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016).
22. The Notice to Leave intimated that proceedings for removal would not be raised before 23 March 2023.
23. The Applicant presented an application to the Tribunal on 7 April 2023 seeking an Order for Eviction.
24. A Notice in terms of s 11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the relevant local authority.

25. Ground 10 of Schedule 3 of the 2016 Act is established as at today's date.

26. It is reasonable to grant the order for eviction.

Reasons for Decision

27. In terms of Rule 17 (3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The Tribunal were of the view that sufficient evidence had been presented and were in a position to reach a decision at the CMD.

28. Whilst the Respondent did not participate in the CMD, the Tribunal required to consider the application before it. In doing so the Tribunal noted that a Notice to Leave had been served in proper form, that proceedings had been raised only after the period of Notice had expired; That the necessary intimation had been provided to the Local Authority in terms of the Homelessness Etc. (Scotland) Act 2003 and that the requirements of Ground 10 of Schedule 3 of the 2016 Act were met, thus enabling the Tribunal to consider the application for eviction.

29. In the circumstances it appeared that a factual and a legal basis had been made out for an order for eviction to be granted. Given that there was no appearance by or on behalf of the Respondent, there was no information before the Tribunal to enable it to conclude otherwise than that granting an order for eviction was reasonable and appropriate in the circumstances.

30. The Tribunal also took account of the personal circumstances of the Applicant and what was known about the Respondent. The Applicant has not received any rent for a considerable period, and currently £15,210 of rent arrears is due. The current position is said to be causing the Applicant considerable stress. The Respondent has clearly abandoned the Property and his ex partner and children who continue to occupy the Property have no legal entitlement to do so. The Respondent's ex-partner has stated that she wishes to be housed by the local authority. In all the circumstances the Tribunal concluded that the Order sought was reasonable.

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.

Y. McKenna

18 August 2023

Legal Member/Chair

Date