



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/23/0753

Re: Property at Flat J, 3 Victoria Road, Dundee, DD1 1EL (“the Property”)

Parties:

Ms Bhareti Patel, 31 York Road, Middlesex, Northwood, HA6 1JJ (“the Applicant”)

Mr Craig Buchan, Flat J, 3 Victoria Road, Dundee, DD1 1EL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Frances Wood (Ordinary Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be made.

1. On 8th March 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 15th March 2019 and a rent of £420 per month;
 - b. Copy Notice to Leave dated 19th October 2022;
 - c. Copy email dated 19th October 2022 to the Respondent serving the Notice to Leave;
 - d. Section 11 Notice;

- e. Quote dated 27th January 2023 from MPM Joinery regarding a bathroom refurbishment;
 - f. Quote dated 3rd February 2023 from Howdens regarding a kitchen refurbishment;
 - g. Emails between the Respondent and the Letting Agent.
3. The Application was served on the Respondent by Sheriff Officers on 15th June 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Young of the letting agent, Rockford Properties. There was no attendance by the Respondent or any representative on his behalf.
5. The Tribunal were satisfied that the Respondent had had service of the papers and notification of the CMD date.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Miss Young sought an order for eviction in terms of ground 3 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the property was a one bed roomed flat on the second floor of a tenement building in the centre of Dundee. She said that it required a significant upgrade of both the kitchen and bathroom. Given the small size of the property she did not think that the respondent could continue to live there while the renovations were carried out.
8. Miss Young said that the kitchen was from the 1970s and it was no longer possible to do any more patch repairs. It needed fully replaced, including the electric sockets.
9. Miss Young said that the bathroom is internal, in that it does not have a window. It is becoming damp, and the tiles are failing. It needs to be stripped out and refurbished, with a new ventilation system being installed. If this work is not carried out there is a risk of the tiles coming off, and water might seep in to the flat below causing flooding.
10. Miss Young said that the Respondent is a bit of a recluse. He is difficult to contact and non committal in discussions. The works were discussed with him, and he gave the tradesmen access for them to prepare quotes. He has changed the locks on the property and only he can allow access. He was indifferent about the works being carried out.

11. The Tribunal were satisfied, in the absence of any opposition by the Respondent, that the ground had been established.

12. Miss Young addressed the Tribunal on reasonableness. She said that the Respondent was a single man in his thirties. She thought that he worked from home. He does not receive housing benefit. He is now in rent arrears in the amount of £3995.02. The Applicant has a portfolio of ten rental properties of varying sizes in the city centre of Dundee. She wishes to keep on top of maintenance and repairs.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 15th March 2019;
3. A Notice To Leave, dated 19th October 2022, was served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer on 15th June 2023;
5. The Applicant has obtained quotes for refurbishment of the kitchen and bathroom;
6. The Applicant intends to carry out said refurbishment when the Respondent vacate;
7. The Respondent is a single man in his thirties;
8. The Respondent works from home;
9. The Respondent is in rent arrears in the amount of £3995.02.

Reasons For Decision

13. It is usually mandatory to grant an application under Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

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

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

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

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

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

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

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

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

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

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

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

(i)in the opening words, for “must” substitute “may”,

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

(iii)after paragraph (b) insert “, and

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

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

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

(iii)after paragraph (b) insert “, and

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

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

14. The Tribunal now has to decide if it is reasonable to grant the eviction order.

15. The Tribunal were of the view in this case that the Applicant had established Ground 3 by provision of the quotes and the submission made by Miss Young.

16. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal noted that the Respondent was a single man in his thirties. He had no pressing need to stay in the let property for work or for the schooling of children. He was in significant rent arrears. The Applicant wished to refurbish the property to keep it to a good standard. The Tribunal considered taking in to account all those facts, that it was reasonable to grant the 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.

Alison Kelly

21/07/23

Legal Member/Chair

Date