



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/23/0759

Re: Property at 15A Low Street, Banff, Aberdeenshire, AB45 1AU (“the Property”)

Parties:

Mr Chris Hughes, Mrs Christine Hughes, Yew Tree Barn, New Deer, Turriff, AB53 6XF (“the Applicant”)

Mr Lukasz Biegun, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under grounds 10 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland Act 2016

Background

1. By application dated 6 March 2023 the Applicants applied to the Tribunal for an order for the eviction of the Respondent from the property under grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants submitted a Statement of Arrears, Copy Notice to Leave, Copy Section 11 Notice with proof of intimation and three copy pre-action letters in support of the application. The Applicants also submitted a copy of the tenancy agreement.
2. By notice of Acceptance dated 27 April 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

3. Sheriff Officers were unable to serve the case papers on the Respondent as it appeared he had removed from the property by 31 May 2023. As a result, the CMD assigned to take place on 29 June 2023 was postponed to allow the Applicants to try to trace the Respondent.
4. By email dated 14 June 2023 the Applicants advised the Tribunal that tracing agents had been unable to locate the Respondent and submitted an application for Service by Advertisement which was granted by the Tribunal and a further CMD was assigned.
5. The Applicants also submitted an application to add an additional ground for eviction and provided the Tribunal with a copy of a further Notice to Leave that had been served on the Respondent by email on 14 June 2023 under Ground 10 of Schedule 3 of the 2016 Act namely that the Respondent was no longer occupying the property as his home.
6. Intimation of the adjourned CMD was advertised on the Housing and Property Chamber Website conform to Certificate of Advertisement dated 12 September 2023.

The Case Management Discussion

7. A CMD was held by teleconference on 12 September 2023. The Applicants were represented by the First Named Applicant, Mr Chris Hughes. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD having been provided to the Respondent by way of Service by Advertisement determined to proceed in his absence.
8. The Applicant confirmed that the parties had entered into a Private Residential Tenancy in July 2022 at a rent of £400.00 per calendar month. He also confirmed that the Respondent had accrued rent arrears and that as a result he had been sent pre-action letters dated 26 October, 26 November and 26 December 2022. The Applicant said the Respondent had not replied to any of the letters.
9. The Applicant went on to say that he had sent a Notice to Leave under Grounds 12 and 12A of Schedule 3 of the 2016 Act to the Respondent by email on 5 February 2023 by email. He confirmed he had intimated the proceedings to Aberdeenshire Council by sending a Section 11 notice on 6 March 2023.
10. The Tribunal noted that following the Sheriff Officers being unable to serve the case papers on the Respondent, the Applicant had contacted the Respondent's wife who had told him she did not know where the Respondent was and that tracing agents had been unable to locate him. The Applicant confirmed that as far as he was aware the Respondent had completely disappeared.
11. The Applicant confirmed he had sent the additional Notice to Leave under Ground 10 of Schedule 3 of the 2016 Act to the Respondent by email on 9 June 2023.

12. The Applicant asked the Tribunal to grant an order for the eviction of the Respondent from the property under grounds 12A and 10. He confirmed the property remained empty awaiting an order from the Tribunal.

Findings in Fact

13. The parties entered into a Private Residential Tenancy agreement that commenced on 5 July 2023 at a rent of £400.00 per calendar month.
14. The Respondent fell into arrears and as at the date of service of a Notice to Leave on 5 February 2023 owed rent amounting to £2400.00.
15. The Applicants intimated a Section 11 Notice to Aberdeenshire Council on 6 March 2023.
16. The Applicants sent pre-action letters to the Respondent on 26 October 2022, 26 November 2022 and 26 December 2022.
17. The Respondent removed from the property by 31 May 2023 and is no longer living there and has not been traced.
18. The Applicants served a second Notice to Leave on the Respondent by email on 9 June 2023 under Ground 10 of Schedule 3 of the 2016 Act.

Reasons for Decision

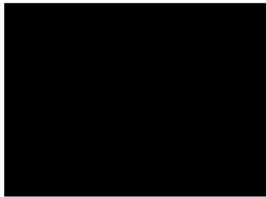
19. The Tribunal was satisfied from the written submissions and documents together with the oral representations that the parties entered into a Private Residential tenancy that commenced on 5 July 2022 at a rent of £400.00 per calendar month. The Tribunal was also satisfied that the Respondent had accrued rent arrears of £2400.00 at the date of service of the Notice to Leave on 6 March 2023 and that the Applicants had complied with the pre-action requirements by sending correspondence to the Respondent in October, November and December 2022.
20. The Tribunal was also satisfied that the Respondent had removed himself from the property by 31 May 2022 without advising the Applicants and could not be traced. In the circumstances the Tribunal considered it was reasonable to allow the Applicants to add the additional ground 10 of Schedule 3 of the 2016 Act to the application, the Notice to Leave having been served on the Respondent by email on 14 June 2023.
21. The Tribunal was also satisfied that in all the circumstances it was reasonable to grant the orders sought under Grounds 10 and 12A of Schedule 3 of the 2016 Act as the Respondent was no longer occupying the property as his home and rent arrears continued to accrue and now amounted to £4400.00.

Decision

11. The Tribunal having carefully considered the oral and written submissions and documents and being satisfied that it can make a decision without the need for a hearing finds the Applicants entitled to an order for the eviction of the Respondent from the property under Grounds 10 and 12A of Schedule 3 of the 2016 Act.

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.



**Graham Harding
Legal Member/Chair**

**12 September 2023
Date**