



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 (the 2016 Act)

Chamber Ref: FTS/HPC/EV/21/1441

Re: Property at Flat 23/6, 6 Dundasvale Court, Glasgow, G4 0DQ (“the Property”)

Parties:

Duodent Properties Ltd, c/o Arc Property Sales and Lettings Ltd, Clyde Offices, 48 West George Street, Glasgow, G2 1BP (“the Applicant”)

Mr James Myles, Flat 3/2, 38 Garlieston Road, Glasgow, G33 4UE (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an Order for Eviction under Ground 10 of Schedule 3 to the 2016 Act.

Background

1. By application dated 15 June 2021 the Applicant applied for an order for eviction and possession of the Property on the basis of Ground 10 of Schedule 3 to the 2016 Act.
2. The papers before the tribunal comprised.
 - Private Residential Tenancy Agreement (PRT) with a commencement date of 1 March 2021
 - Notice to Leave dated 12 May 2021 with an end of the notice period specified as 11 June 2021
 - Service of Notice to Leave by e-mail dated 12 May 2021
 - Notice under section 11 of the Homelessness etc (Scotland) Act 2003

- Evidence showing that the Respondent had left the Property, namely Police Undertaking Form issued to the Respondent allowing him liberation to attend at Glasgow Sheriff Court on 6 May 2021 and authorising he had no contact with Rebecca Lindsay in any way. (Rebecca Lindsay remaining in the Property).
- 3. By Decision dated 16 July 2021, a Convenor of the HPC, having delegated power for the purpose, referred the application to the tribunal. A letter of intimation dated 26 July 2021 and Notice of the Case Management Discussion (CMD) to be held on 27 August 2021 at 11.30 am by teleconference call together with the case papers was served on the Respondent by Sheriff Officers on 28 July 2021. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Citation of that date.

The Case Management Discussion (CMD)

4. The CMD took place by teleconference call. The Applicant was represented by Mr Nick Ponty of Arc Property Sales and Lettings Ltd. The Respondent neither appeared nor was represented.
5. The tribunal was satisfied that notice of the CMD had been duly served on the Respondent together with a full set of papers relating to the application and he had chosen neither to attend nor make representations. It was content to proceed in his absence. The tribunal was satisfied that due notice had been given to the Respondent to which he had failed to respond.
6. Mr Ponty submitted that an Order for Eviction under Ground 10 should be granted by the tribunal today. He said that he had been in regular contact with the Respondent by telephone and over the social media platform WhatsApp. The Respondent was not occupying the Property and had told him that he would not be attending the CMD.
7. He informed the tribunal that shortly after the commencement of the PRT the Respondent had moved his girlfriend into the Property and that she had lived there since that time. A domestic incident had occurred. The police were involved and there were charges made by both the Respondent against his girlfriend and by the girlfriend against the Respondent.
8. Mr Ponty said that bail conditions were in place preventing the Respondent from returning to the Property and he has not returned since the incident occurred. He understands that the criminal proceedings have not yet concluded.
9. He stated that the Applicant had taken advice from the Scottish Association of Landlords as the Respondent's girlfriend has continued to occupy the Property, has refused to engage with the Applicant and no rent has been paid.

10. Mr Ponty confirmed that the Respondent had paid the rent up until 11 June 2021 and the last payment was £216.98 which covered the period up until the Notice expiry date in the Notice to Leave.
11. He said that the Respondent initially wanted to move back into the Property but as his girlfriend was not leaving, he had no other option but to leave. He said that the landlord would gladly have welcomed him back. He was a good communicator and neither the letting agent or the landlord wanted the lease to end.
12. The tribunal enquired regarding the Respondent's current circumstances. He has a new address, and the Applicant was unaware of any health concerns that the Respondent had.
13. Mr Ponty enquired regarding the position of the girlfriend who it appears is remaining in the Property. The tribunal said that they were unable to provide the Applicant with any legal advice regarding that as the tribunal requires to be independent and impartial.

Findings in Fact

14. The Applicant is the Landlord of the Property, the Respondent is the tenant in terms of a PRT entered into between the parties with a start date of 1 March 2021.
15. A Notice to Leave dated 12 May 2021 was served by e-mail on the Respondent as provided for in the PRT.
16. The Notice intimated that the Applicant was seeking recovery and possession of the Property on the grounds that the Respondent was not occupying the let Property as the Respondent's home- Ground 10 under Schedule 3 to the 2016 Act.
17. The Notice to Leave was served by e-mail on 12 May 2021.
18. The Notice to Leave intimated that proceedings for removal would not be raised prior to 11 June 2021.
19. The Applicant presented an application to the tribunal on 15 June 2021.
20. A Notice in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 had been intimated to the relevant local authority.
21. The Respondent is not occupying the Property as his home.
22. It is reasonable to grant the Order

Reasons for Decision

23. Rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Rules ") states that the tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. The tribunal decided that, on the basis of the information presented

to it, and in the absence of the Respondent that it was able to determine the application at the CMD.

24. The tribunal accepted the information on the file and as provided by Mr Ponty and accepted his position that it was reasonable to grant the order. It was satisfied that due process had been followed by the Applicant and that the order for eviction be granted.

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.

[REDACTED]

Legal Member/Chair Yvonne McKenna

27 August 2021