



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/20/1449

Re: Property at G/R 11, Morgan Place, Dundee, DD4 6NA (“the Property”)

Parties:

Mr Stewart Dewar, 45 Penicuick Road, Roslin, Edinburgh, EH25 9LJ (“the Applicant”)

Mr Roddy Balfour, G/R 11, Morgan Place, Dundee, DD4 6NA (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession be granted in respect of the Property

Introduction

This case was heard at the same time as case referenced FTS/HPC/CV/20/1466. The Respondent in each of the cases is the tenant under the relevant lease.

Service of the applications were made upon the Respondent by Sheriff Officer on 6 August 2020. No steps were taken by him thereafter to lodge any response or representations to either application.

A Case Management Discussion (CMD) took place by teleconference on 25 August 2020 at 2.00 pm.

The Applicant, Mr Stewart Dewar, was represented by Mr Alec Campbell of Lara Letting Ltd.

The Respondent, Mr Roddy Balfour, was represented by Miss Rebecca Menzies of Dundee North Law Centre.

Findings and Reasons

The Property is G/R 11 Morgan Place, Dundee DD4 6NA.

These applications are under Rules 66 and 70 and seek both an eviction order and an order for payment arising from alleged rent arrears.

The applications are accompanied by the following documents.

1. Copy Tenancy Agreement.
2. Copy AT5.
3. Copy Notice to Quit and Section 33 Notice.
4. Section 11 Notice.
5. Rent Statements.

The parties entered into a short assured tenancy which commenced on 6 November 2016. Rent was stipulated at a rate of £550 per month. A relevant AT5 was served on the respondent prior to the tenancy commencing and a copy of this is produced which shows his signature on 26 September 2016.

A Section 33 Notice and Notice to Quit were served on the respondent. These documents are dated 30 December 2019. These required the Respondent to vacate the property by 6 March 2020. The Applicant provided the Respondent with the necessary 2 months' notice to quit under the Short Assured Tenancy contract. There is a Sheriff Officer's execution which discloses that these documents were served on the Respondent on 31 December 2019.

The Applicant is entitled to recover possession of the property in the circumstances. The Tribunal relied upon the documentary evidence and the Applicant's representative's submissions, none of which were challenged. The Respondent's representative was not instructed to oppose the eviction application. She accepted that all the documentary evidence was in order. The Respondent has already been rehoused.

Full and detailed rent statements accompany the application for a payment order. The total arrears reflected in the statements, as at the time of the applications being made, totalled £6,989.84.

The Applicant is entitled to recover arrears of rent legally due under the lease. The Applicant's representative stated that whilst having secure instructions from the Respondent she had not received a copy of the relevant documents relating to this application. The Respondent objects to the payment application in two respects.

Firstly he states that the sum sought is factually inaccurate. Secondly he relies upon the alleged poor state of repair of the Property. He is noted however to have made no application to the Repairing Standard jurisdiction of the Tribunal and no Repairing Standard Enforcement Order has been issued, nor any Rent Relief Order.

Miss Menzies moved for an adjournment to enable her to consider the documents in full and take further instructions. Mr Campbell opposed the adjournment. The Tribunal granted the adjournment request. It was in the interests of justice to do so to allow the Respondent to fully state his case and present other documents; all as advised.

The parties representatives were subsequently agreed that the dispute is more than likely capable of resolution in the absence of the fixing of a full evidential hearing. They were agreed that the application should be case managed by the fixing of a further CMD, subject to Directions being issued as follows :

Within 14 days the Respondent is required to lodge a full written submission setting out his defence to the application, and also lodge all documentary evidence he seeks to rely upon, to include all bank statements, written witness statements of himself and any relevant others, and photographs.

The written application for a payment order additionally seeks interest on the principal sum at the judicial rate of 8%. This has no statutory effect for the Tribunal. 3% would compare to the short-term commercial loans which would be available on the market and would be a reasonable rate to be applied.

The application also seeks expenses. Rule 40 governs any expenses. It seems unlikely that the Applicant will be able to insist upon any expenses.

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.

Richard Mill

25 August 2020

Legal Member/Chair

Date

*Insert or Delete as required