

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/20/2282

Re: Property at 8 Rochsoles Crescent, Airdrie, ML6 6TE (“the Property”)

Parties:

Mr Michael Boyle, Flat 3, 9 Grosvenor Terrace, Grosvenor Street, St Helier, Jersey, JE2 4QS (“the Applicant”)

Mr John Boyle, 8 Rochsoles Crescent, Airdrie, ML6 6TE (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 8 Rochsoles Crescent, Airdrie, ML6 6TE under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 be granted. 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 forth 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. By application dated 29 October 2020 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order to evict the Respondent from the Property due to rent arrears.

2. On 2 December 2020, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. A Case Management Discussion (“CMD”) proceeded on 12 January 2021 by way of teleconference call. The Applicant was represented by Mr McDermott, Solicitor, Messrs Friels and the Respondent by Mr Knox, Solicitor from the Lanarkshire Community Law Centre.
2. Arrears were conceded by Mr Knox. After representations from both parties the Tribunal decided to continue the case to ascertain whether the Respondent’s appeal to obtain back dated Universal Credit had been successful which was relevant to the Tribunal’s consideration as to whether it was reasonable to issue an Order to evict the Respondent. A Note following the CMD was issued to both parties.
3. The matter called before the Tribunal for a continued CMD on 17 February 2021 by way of teleconference call. The Applicant was again represented by Mr McDermott and the Respondent by Mr Knox.
4. Mr Knox explained that the Respondent’s appeal to the First-tier Tribunal (Social Security and Child Support) on 8 February 2021 had been unsuccessful and that leave to appeal was being sought from that Tribunal to the Upper Tribunal. He submitted that the Respondent’s financial position was precarious and that his client had underlying mental health issues. Mr Knox moved the case be continued for 4-6 weeks. Mr McDermott submitted his client was anxious to progress matters as the Notice to Leave had been served in April 2020 and arrears were increasing. However he was unable to confirm whether the Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
5. The Tribunal decided to adjourn the case in terms of Rule 28 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended for submissions on reasonableness to be made by both parties and for the Respondent to produce evidence of any mental health issues. A further Note following the CMD was issued to both parties.
6. Lengthy submissions on reasonableness were submitted to the Tribunal by Mr McDermott on behalf of the Applicant on 19 March 2021.

Continued Case Management Discussion.

- 7 The matter called before the Tribunal for a continued CMD on 25 March 2021 by way of teleconference call. The Applicant was again represented by Mr McDermott and the Respondent by Mr Knox.
- 8 Mr Knox submitted that parties had reached a settlement. His client was not in a position to resist the Order sought and accordingly consented to the Order for eviction. Parties were in agreement that the Order for eviction would not be enforced until 30 September 2021. He was hopeful that this would allow parties to build bridges on a personal level. Mr Mc Dermott confirmed that settlement had been reached in those terms and that the Order for eviction be granted.

Reasons for Decision

- 9 In the circumstances, being satisfied that parties were in agreement that an Order be granted which could not be enforced until 30 September 2021 and that the terms of Section 51 and Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 were also satisfied, it being reasonable to do so, the Tribunal granted an Order for repossession.

Decision

- 10 The Tribunal granted an Order for repossession.

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.

Shirley Evans

25 March 2021

Legal Chair

Date