



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/21/0087

Re: Property at 6 (GR) Belsize Road, Broughty Ferry, Dundee, DD5 1NF (“the Property”)

Parties:

Mr Stuart Thomson, 28 Beaumont Crescent, Broughty Ferry, Dundee, DD5 3LT (“the Applicant”)

Mr Darren Heary, 6 (GR) Belsize Road, Broughty Ferry, Dundee, DD5 1NF (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent).

- 1. The tribunal determined that an order for the eviction of the respondent from the property at 6 (GR) Belsize Road, Broughty Ferry, Dundee, DD5 3LT be made on the basis of ground 5, that a member of the applicant’s family intends to live in the property as his only or principal home for at least three months, and it is reasonable in all of the circumstances to grant the order.**
1. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’. The applicant was represented by Mr Alan Masterton solicitor. The respondent did not attend, and he was not represented. The tribunal had sight of the execution of service of the application on the respondent dated 4 March 2021. The tribunal was satisfied that the respondent had received appropriate notice in terms of rule

24. The tribunal proceeded with the CMD in the respondent's absence in terms of rule 29.

2. The tribunal had before it the following copy documents:

- (1) Application dated 13 January 2021.
- (2) PRT dated 8,9 July 2020.
- (3) Land certificate.
- (4) S11 notice.
- (5) Letter from applicant's agents to respondent regarding rent arrears dated 17 September 2020.
- (6) Notice to leave dated 9 October 2020.
- (7) Email intimating notice to leave dated 9 October 2020.
- (8) Email from applicant to his agents dated 8 October 2020.
- (9) Email from applicant's agents to the respondent dated 20 November 2020.
- (10) Affidavit executed by the applicant's son dated 6 February 2021.
- (11) Email from the joint owner Mrs Thomson dated 4 February 2021.

Discussion

3. Mr Masterton invited the tribunal to apply the terms of Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 in relation to the notice to leave. The notice to leave was dated 9 October 2020 and it was served by emailing it to the respondent on that date. It was deemed to have been received on 11 October 2020. The three months' notice period expired on 11 January 2021. The date therefor required in part 4 of the notice to leave in terms of s62(1)(b) and (4) of the Act was 12 January 2021. The date given on the notice to leave was in fact 11 January 2021. The application was made on 13 January 2021.
4. Mr Masterton was seeking an order for eviction today. This was on the basis of ground 5 that the applicant's son wishes to reside in the property, and it was reasonable for the order to be granted. The tribunal sought further information to enable it to be satisfied that it was reasonable to grant the order. The affidavit did not make clear that he intended to live in the property for at least 3 months as his only or principal home. Mr Masterton confirmed that the applicant's son intends to live in the property for the foreseeable future and it will be his only home.

5. Further, Mr Masterton stated that initially his client was proceeding on the basis that there are rent arrears for the property. It was his position that the rent arrears have accrued almost since the PRT commenced. The tribunal noted that the letter of 17 September 2020 (item 5 above) referred to three months of arrears. Mr Masterton stated that the position changed in October 2020 as the applicant's son split up from his partner and had to give notice on his own tenancy. There is a letter lodged from the applicant to that effect (item 8 above). Mr Masterton stated that the rent arrears have continued, and the respondent has made no attempts to make any payment. He further stated that the applicant has visited the property over the last few weeks, and it does not appear that there is anyone living there. The applicant has not been able to gain access since August 2020 but in recent weeks the property appears from the outside, to be vacant. There is no furniture in the main room apart from a sofa and the bin stored outside is empty. This has been the situation for several weeks. He invited the tribunal to grant the order sought on the basis that it was reasonable in all of the circumstances to do so.

6. Findings in fact

- (1) The applicant is the owner of the property.
- (2) The parties entered into a PRT in July 2020 for let of the property.
- (3) The tenancy commenced on the 8 July 2020.
- (4) The agreed rent was £500 per month.
- (5) Arrears began to accrue and in September 2020 there were around three months of arrears.
- (6) The respondent has paid no rent since September 2020.
- (7) The applicant's son intends to move into the property and reside there for at least three months as his only or principal home.
- (8) The respondent is unlikely to be residing in the property.
- (9) A valid notice to leave dated 9 October 2020 was served by email on that date.
- (10) The agreed method of communication with the respondent was by email.
- (11) It is reasonable in all of the circumstances that an eviction order be granted.

Reasons

7. This was an undefended application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.

8. The notice to leave served on the respondent on 9 October had the correct three months period of notice, save that the end date of the notice period should have been 12 January 2021 rather than 11 January 2021. Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 provides that notices are not invalidated by reason of a failure to comply with the requirements of the 2020 Act amendments. Given the application was not made until the 13 January 2021 and the notice was only one day out, the tribunal decided the notice was valid despite this minor error.

9. The tribunal was satisfied that the eviction ground was established by the affidavit of the applicant's son, together with the applicant's email to his agents indicating that there was a change in circumstances and his son now required to live in the property. Having regard to the whole circumstances of the case, the respondent has received his notice to leave and has not given up the tenancy. The respondent has incurred rent arrears and is probably not living in the property. In accordance with the overriding objective the tribunal was satisfied that the eviction ground 5 was met and that it was reasonable to grant the eviction. The tribunal accordingly granted the order for eviction.

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.

L Ward

8 April 2021

Lesley A Ward Legal Member

Date