



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/21/0445

Re: Property at 13 Fraser Street, Aberdeen, AB25 3XT (“the Property”)

Parties:

Mr James Hay, Envision Property Management, PO Box 10517, Aberdeen, AB12 9DL (“the Applicant”)

Mr Damien Luiken, 2FR 18 Holland Street, Aberdeen, AB25 3UL (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be made against the Respondent

Background

1. These two applications, referenced FTS/HPC/EV/21/0445 and FTS/HPC/CV/21/0446 were heard together. They relate to the same property and are between the same parties. The first application seeks an eviction order and is under Rule 109 and section 51, and the second application seeks an order for payment, relative to rent arrears, and is under Rule 111 and section 71. The Rules are contained within the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and the sections are contained within the Private Housing (Tenancies) (Scotland) Act 2016, which govern the applications.

2. Service of both applications upon the respondent took place by way of Sheriff Officer delivery on 17 May 2021. Service was effected at Flat 2FR, 18 Holland Street, Aberdeen AB25 3UL. Sheriff Officers had identified the respondent's residence there and spoke to the respondent over the front door buzzer system to identify his presence there at the time of service. Written representations were required to lodge with the Tribunal by 7 June 2021 but none were received from the respondent.
3. A Case Management Discussion (CMD) took place in both cases at 10.00 am on 17 June 2021. The Applicant was represented by Mr Alasdair Taylor of Messrs Burnett & Reid, Solicitors. The respondent joined the teleconference hearing and represented his own interests.

Discussion

4. The respondent stated that he was confused by the bringing of the two applications before the Tribunal. He advised that he had left the property around 20 June 2020 and that he had given valid notice to end the tenancy. He was vague about the specific steps he had taken in this respect, referring to having sent either an e mail or text. He was clear that he could not evidence such notice having been given, due to losing his phone and being logged out of his email account.
5. The applicant's solicitor was afforded the fair opportunity to take instructions from the applicant on the respondent's position. After an adjournment the applicant's solicitor advised that the priority was to seek vacant possession of the property. Accordingly it was submitted that the eviction application was to be insisted upon only on the grounds of abandonment only, not on the other ground relied upon in the written application, namely rent arrears. Additionally it was submitted that the rent arrears sought to be recovered would be much restricted to one of two months rent, representing the months of May and June 2020 in the sum of £800 (the total outstanding in the event of a finding that the tenancy continued would be £5,000).
6. The Respondent indicated explicitly that he consented to an eviction order being granted on the ground of abandonment only, recognising that the steps he took to end the property had been deficient. He consented to a payment order being made in the restricted sum of £800 representing the latter period he occupied the property. He also confirmed that any remaining possessions in the property can be disposed of by the applicant.

Findings and Reasons

7. The property is 13 Fraser Street, Aberdeen AB25 3XT.

8. The applicant is Mr James Geddie Sutherland Hay. He is the registered landlord of the Property. The respondent is Mr Damien Luiken. He is the tenant.
9. The parties entered into a private residential tenancy which commenced on 6 November 2018. The monthly rent was stipulated at £400.
10. The respondent has made no rental payments since 24 April 2020. He left the property at the end of June 2020 but has failed to evidence taking valid steps to bring the tenancy to an end. He left numerous items in the property when he left. He abandoned the property.
11. The applicant has served two Notices to Leave in order to pursue the respondent's eviction from the property.
12. Two Notices to Leave have been served upon the respondent. The first Notice to Leave was served on the basis of ground 12 of Part 1 of Schedule 3 to the 2016 Act in respect that the respondent had been in rent arrears for three or more consecutive months. That Notice to Leave is dated 11 August 2020. A second Notice to Leave was served upon the respondent on the basis that the applicant identified that the respondent was no longer occupying the property and was based upon ground 10 of Part 1 of Schedule 3 to the 2016 Act. That Notice to Leave is dated 15 January 2021.
13. The provisions of the Coronavirus (Scotland) Act 2020, which came into force on 7 April 2020, extended notice periods for many eviction grounds relied upon and additionally provides that all eviction grounds are discretionary.
14. The relevant notice period relevant to ground 12 was extended from 28 days to 6 months by the provisions of the 2020 Act. The notice period for ground 10 was not extended and was previously one of 28 days and remains one of 28 days.
13. An analysis of both Notices to Leave discloses that they are both valid with reference to Section 62 of the 2016 Act. The relevant notice period was provided and the end of the notice period specified at Part 4 in each Notice to Leave was correct. Both Notices to Leave can therefore be relied upon by the applicant in the eviction application. Ultimately the first Notice to Leave, relative to rent arrears, was not insisted upon.
14. The Tribunal found as a fact that the respondent had abandoned the property. He has taken up occupation of another residential property. He does not wish the tenancy between the parties to continue. He consented to an eviction order being made on the grounds of abandonment. In all the circumstances the Tribunal found it reasonable to make such order.

15. Both applications are accompanied by a detailed rent statement which discloses that no rent has been paid since 24 April 2020. The applicant is entitled to recover arrears of rent lawfully due under and in terms of the lease. The applicant sought to recover a restricted total of £800 representing the months of May and June 2020 when the applicant continued to occupy the property. The Tribunal found the rent statement produced credible and reliable and attached weight to it. The respondent agreed he had not paid rent for those months and consented to a payment order being made in the sum of £800. No time to pay application was made.

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.

R.M.

17 June 2021

Legal Member/Chair

Date