



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/0547

Re: Property at Ciaran Cottage, Fearnan, Perthshire, PH15 2PG (“the Property”)

Parties:

Mr Billy McIntyre, 16 Rosehall Crescent, Uddingston, Glasgow, G71 7FQ (“the Applicant”)

Miss Racheal Barnes, 14 Denfield Place, Kirkcaldy, Fife, KY1 2BG (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

The Applicant seeks an Eviction Order in respect of Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. Together with the Application, the Applicant has produced a copy of the tenancy agreement, a rent statement and a further updated rent statement, the Notice to Leave relied on and the Sheriff Officers’ certificate of execution of service of the Notice to Leave. Notice had also been given to the local authority as per s 11 of the Homelessness etc. (Scotland) Act 2003. The Applicant had also lodged an exchange of communications between the parties regarding the subject matter of the Application.

Case Management Discussion

The Application called by way of a conference call at 10 am on 14 June 2021. The case was heard alongside the related Application with reference FTS/HPC/CV/21/0682 which was in respect of a Payment Order.

The Applicant was personally present on the call. Sheriff Officers had served the Application and information about how to join the conference call on the Respondent on 17 May 2021. There was no appearance by or on behalf of the Respondent. The Sheriff Officers' certificate of execution of service and covering letter made reference to the Respondent mentioning her poor mental health to the Sheriff Officers who served the paperwork.

It was also said that the Respondent would be making representations by email but no email representations had ever been received. The Tribunal decided it was fair to proceed in the absence of the Respondent but would keep in mind the issue of the Respondent's mental health in case this became a relevant feature of the case.

The Tribunal decided to hear about the case in respect of Grounds 12 and consider after that whether it would be necessary to hear further about the Application of Grounds 1.

The Tribunal heard from the Applicant and even though the Application was unopposed decided to carefully question the Applicant with a view to assessing the reasonableness or otherwise of making the order sought.

Mr McKenzie gave an impressive account of himself in respect of his knowledge of the situation and the Tribunal had no reason to doubt his credibility and reliability. There was insufficient evidence to suggest that the Respondent's mental health difficulties precluded her from participating in the Tribunal or that it was a relevant factor in the case.

Having heard from the Applicant and fully explored the issues regarding the Application, the Tribunal made the following findings- in-fact.

Findings in Fact

- I. *The parties entered into a Private Residential Tenancy at the Property which commenced on 26 March 2020;*
- II. *The Applicant was the landlord and the Respondent was the tenant;*
- III. *The contractual monthly rent due is £550.00 per month;*

- IV. *The Applicant received £1,000.00 from the Respondent at the start of the tenancy for the first month's rent and £450.00 which the Applicant assigned as a deposit and which the Applicant advises is registered with an approved deposit protection scheme;*
- V. *The Respondent quickly fell into rent arrears;*
- VI. *The Applicant has only ever made two full months' worth of rental payments and almost immediately began to pay nothing each month;*
- VII. *There was one month in which the DWP appeared to have paid the rent for the Respondent but this was not sustained;*
- VIII. *The Applicant has liaised with the DWP and attempted to assist the Respondent in setting up the regular direct payments but the Respondent has not cooperated;*
- IX. *The Respondent at one point suggested to the Applicant in a text message that if he paid her £1,000.00 then she would leave the Property quickly;*
- X. *The Applicant instructed Sheriff Officers to serve a Notice to Leave on the Respondent on 4 September 2020. That Notice to Leave sought to end the tenancy on the basis of Grounds 1 and 12 of Schedule 3 of Private Housing (Tenancies) (Scotland) Act 2016. The Notice confirmed the notice period would end on 8 March 2021;*
- XI. *As at the date of service of the Notice to Leave the Respondent was in rent arrears of at least one month's worth of rent and had been so in arrears for a period of at least three months;*
- XII. *The Respondent is similarly in rent arrears of a sum greater than one month's worth of rent as at today's date and has been so for a period of in excess of three months;*
- XIII. *The Tribunal concludes that Grounds 12 of Schedule 3 to the said Act is engaged and that, having considered the whole circumstances of the case and taking into account the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, that the Applicant has complied with all the legislative requirements necessary to properly bring this Application;*
- XIV. *It is reasonable that the Application is granted and an Eviction Order is made;*
- XV. *The Respondent is not currently occupying the Property and appears to have removed herself to her current address at 14 Denfield Place, Kirkcaldy;*
- XVI. *The Respondent has not however returned the keys to the Property to the Applicant and has never confirmed that she has formally vacated the Property meaning it is reasonable that the order sought is granted.*

Decision

Having made the above findings in fact, the Tribunal decided to grant the Application and make an Eviction Order. In light of the decision made regarding Grounds 12, the Tribunal did not consider it necessary to further consider the merits of Grounds 1.

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.

14 June 2021

Legal Member/Chair

Date