



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/21/0750

Re: Property at 60 West Wellhall Wynd, Hamilton, ML3 9GA (“the Property”)

Parties:

Mr Graeme Arderne, c/o IGLOO Estate Agents, 2 Gateside St, Hamilton, ML3 7JG (“the Applicant”)

Mr Kyle Wilson, 60 West Wellhall Wynd, Hamilton, ML3 9GA (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

1. By application received between 24 and 26 March 2021 (“the Application”), the Applicant made an application to the Tribunal for an eviction order. The Application comprised an application form dated 24 March 2021, a copy of private rented tenancy agreement between the Parties, copy Notice to Leave citing Ground 12 issued on behalf of the Applicant together with copy proof of Sheriff Officer service, copy notice to the relevant local authority in terms of the Homelessness Etc., (Scotland) Act 2003, a statement of rent due and owing by the Respondent to the Applicant and copy correspondence relative to the rent due and owing.

2. On 6 April 2021, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 14 May 2021 at 10.00 am by telephone conference call. The CMD was intimated to both parties.

Case Management Discussion (CMD)

3. The CMD took place on 14 May 2021 at 10.00 am by telephone conference call. The Applicant was present and took part. The Respondent was not present and was not represented.
4. The Tribunal explained to the Applicant that there were two stages to the Tribunal’s decision process, namely the competence of the statutory procedure and the reasonableness test.
5. With reference to the statutory procedure, the Tribunal noted that it was dated 15 September 2020 and have an effective date of 19 March 2021. The Applicant explained that it was prepared by his letting agents but that he did not know if it was sent by email on the day of signing, 15 September 2020.
6. The Notice to Leave was served by Sheriff Officers on 18 September 2020 but it was not personal service as it was left at the Property. The Sheriff Officers also sent a copy by post on 18 September 2020.
7. The relevant sections of The Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are:-
 - i) Section 62 (1)(b) which states that the Notice to Leave must (b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal;
 - ii) Section 62 (4) which states that the day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire;
 - iii) Section 62 (4) which states that for the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent and
 - iv) Section 54 (2) which states that the relevant period in relation to a notice to leave begins on the day the tenant receives the notice to leave from the landlord.
8. Therefore, as the Notice to Leave was not served personally on the Respondent, the Tribunal must apply the 48 hours required by Section 62(4) for receipt. It was left at the Property and posted by the Sheriff Officers on 18

September 2020, so the day on which it is assumed to have been received is 20 September 2020. Therefore, in terms of 62(1)(b), the day from which the notice period runs is 21 September 2020 and so the expiry date is 22 March 2021, not 19 March 2021 as stated in the Notice.

9. The Tribunal then had regard to Schedule 1 to the Coronavirus (Scotland) Act 2020 which at paragraph 10(1) which states that, in eviction proceedings, a notice in terms of the 2016 Act, of which the Notice to Leave is one, is not to be invalid due to an error provided it is not relied until the date on which it could have been relied on has been correctly completed. In short, provided the Applicant did not apply to the Chamber before the date which ought to have been given on the Notice to Leave, it is not invalid.
10. The effective date which ought to have been given on the Notice to Leave is 22 September 2021. The Application was accepted by the Chamber and so made on 26 March 2021. Accordingly, the Notice to Leave can be treated as valid.
11. The Tribunal then had regard to the Ground cited in the Notice to Leave, being Ground 12, more than three months consecutive rent in arrears, and noted from the Application that the Respondent had stopped paying rent in June 2020. The Applicant confirmed that this was so. Therefore, the Tribunal was satisfied that Ground 12 had been complied with.
12. The Tribunal, being satisfied that the statutory procedure had been complied with, then regard to the reasonableness test and sought information from the Applicant.
13. The Tribunal noted from the Application that the Applicant, his wife and his letting agents had written to the Respondent regarding the rent arrears and had offered advice and support in dealing with this debt. The Respondent had replied on one occasion only indicating that he would pay the rent due but then failed to do so. The Applicant agreed that he had tried to be supportive to the Respondent but had not managed to make direct contact. He explained that the Respondent had been a good tenant and had paid regularly until June 2020. Around that date, there had been an incident reported by a neighbouring owner of the door to the Property being heavily damaged and the carpeting around the door becoming unkempt. The Applicant stressed that he was concerned for the Respondent who did not appear to be residing at the Property and had driven past the Property at various times to try to ascertain if the Respondent was in occupation and had attempted to have neighbouring owner confirm the Respondent's occupation or otherwise. The Applicant advised the Tribunal that he had carried out repairs to the external part of the Property and had made no attempt to force entry to it, having made an application to the Chamber for access rights.

14. The Applicant advised that he was concerned in respect of the safety of the Property and the possible risk to the other properties in the block. He advised the Tribunal that the Property was a mid-level flat in a block of six and, if it has been unoccupied and the utilities have been unchecked for a considerable time, there is a real risk of damage to the Property and the neighbouring properties.
15. The Applicant explained that, as far as he knew, the Respondent had been in employment as a sales person for a commercial water company but did not know if he was still in employment.

Findings in Fact

16. From the Application and the CMD, the Tribunal found the following facts to be established: -
 - i) There was a private residential tenancy agreement between the Parties in respect of which the monthly rent was £495.00;
 - ii) The Respondent has failed to pay the rent due from May 2020 which is more than three consecutive months;
 - iii) The Applicant has complied with the statutory requirements of the 2016 Act;
 - iv) The Applicant has offered debt advice and support to the Respondent;
 - v) The Respondent has not made any contact with the Applicant or provided any explanation for the unpaid rent;
 - vi) The Applicant has significant concerns in relation to the Property and the possible lack of occupation;
 - vii) The Applicant has significant concerns in relation to the effect on neighbouring properties due to the possible lack of occupation of the Property and
 - viii) It is not known if the Respondent continues to occupy the Property or if it has been abandoned by him.

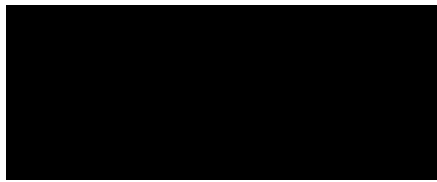
Decision and Reasons for Decision

17. Having been satisfied that the statutory procedure had been complied with, the Tribunal had regard to the evidence and findings in fact in respect of the reasonableness test. The Tribunal took the view that the Respondent has failed to pay rent for almost a calendar year and has done so without excuse or reason being given to the Applicant or to the Tribunal. The Tribunal took the view that the Applicant has made every effort to engage with the Respondent to no avail. The Tribunal had regard to the fact that the Applicant has significant concerns regarding the condition of the Property and damage which might realistically be caused to neighbouring properties for which the Applicant might become liable by virtue of his ownership. The Tribunal came to the decision that on balance, taking account of the financial loss to the Applicant and the risk of damage to

the Property and neighbouring properties both of which have been established and as there was no evidence in respect of the Respondent's personal circumstances, it is reasonable to grant the eviction order as requested. The Tribunal then had regard to Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so the Tribunal proceeded to make the eviction order.

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.



Legal Member: Karen Moore

Date: 14 May 2021