

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/21/1074

Re: Property at Flat 3/L 26 Albert Street, Dundee, DD4 6QG (“the Property”)

Parties:

Mr Grahame Taylor, 69 Ballumbie Gardens, Dundee, DD4 0NR (“the Applicant”)

Mr Krzysztof Marzec, Flat 3/L 26 Albert Street, Dundee, DD4 6QG (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under grounds 1 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the Respondents’ rental statement

- an email from an estate agent confirming costs for selling the property.
3. The Applicant appeared. The Respondent did not appear. The application and notice of today's case management discussion (CMD) had been served on the respondent by sheriff officers. The tribunal being satisfied that the respondent had been notified of today's CMD was prepared to proceed with today's CMD in his absence.

Case Management Discussion

4. The Applicant advised that he was seeking an order for recovery of the possession of the property under the grounds 1 (intention to sell the property) and 12 (rent arrears for 3 months). The tribunal noted the terms of the lease agreement, the notice to leave and the section 11 notice all lodged with the application. Turning to the evidence to support the grounds for eviction, the applicant advised that :-
5. In relation to the intention to sell, he had experienced problems with the letting agents in the renting out of this property and this tenant. He advised that the property was now in poor condition; he believed that the tenant was breaching the terms of the tenancy agreement by using illegal substances within it; the tenant had allowed the condition of the property to deteriorate and on one occasion Environmental Health had had to take entry to the property and repair the toilet as water from the toilet had been running down the side of the building, and the tenant had not allowed access in to repair it; and the tenant had failed to pay any rent other than one payment of £100. Given all of these problems the applicant had decided that he no longer wished to rent the property out and therefore decided to sell it. He had lodged an email from an estate agent setting out the costs for selling the property. While he intended to sell the property, he advised that he would have repair and redecorate it first.
6. The applicant advised that the rent arrears were still outstanding and had in fact increased. Since the tenant had taken entry he had made one payment only, of £100, to the rent. There had been no other payments at all. He advised that he had attempted to contact the tenant, by phone, email, post and had visited on a number of occasions. He had had no response from the tenant to any of his attempts to contact him. He advised that he had contacted the benefits agency to see if any payments could be made direct to him, however he had been advised to contact his letting agent about this matter. Further, they did not confirm if the tenant was in receipt of any benefits. He advised that he was only aware of the tenant residing at the property and he was not sure that he resides there all the time or not. He was unaware of any dependents residing there.
7. The applicant had complied with the coronavirus pre-action requirements and had written to the tenant. He had sent this letter by recorded delivery, and it was signed for, however there was no response to that letter.

Findings in Fact

8. The Tribunal found the following facts established: -
9. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 17 May 2019.
10. Condition 8 entitled "Rent" of the Tenancy Agreement provides that the rent for the property is £320.00 per month payable in advance.
11. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 27 October 2020. It confirmed that proceedings would not be brought until 28 April 2021. It had been served by sheriff officers on 27 October 2019. The grounds in the notice to leave were grounds 1 "intention to sell" and 12 "you are in rent arrears over three consecutive months".
12. The applicant owned the property.
13. He had made inquiries into the process of selling the property.
14. That there appears to have been rent arrears for a period of at least 3 months on the date when the notice to leave was served.
15. That rent arrears were now in excess of £7900.
16. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
17. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

18. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
19. The grounds which the Applicant seeks eviction under are ground 1 intention to sell and ground 12 rent arrears.
20. Ground 1 is established if the applicant is entitled to sell the property and intends to sell it for market value or at least put it up for sale in 3 months of the tenant ceasing to occupy it.
21. In terms of ground 12 it states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months; and that the

Tribunal may find that the ground named in sub-paragraph 1 applies if (a) for three or more consecutive months the tenant has been in arrears of rent; and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

22. The Respondent did not appear today. The applicant owned the property and explained his reasons for wishing to sell the property once he has carried out redecoration works. The applicant explained that there had been one payment only of £100 towards the rent. He had made numerous attempts to get the Respondent to engage with him over the rent arrears however there had been no contact whatsoever from the respondent. On the day that the notice to leave had been served the Respondent had been in rent arrears for at least three months. The arrears had now increased. It appeared to the tribunal that the terms of grounds 1 and 12 were met. Further, having regard to the problems that the applicant had had with the respondent in terms of the condition of the property, the failure to pay rent, and the fact that we were aware of no mitigating reasons not to grant the order, it appeared to us that it would be reasonable to grant an order for eviction. We therefore find that grounds 1 and 12 were met and grant an eviction order in terms of ground 1 and 12.

Decision

23. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under grounds 1 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

M Barbour

10 August 2021

Legal Member/Chair

Date