



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 (Act)

Chamber Ref: FTS/HPC/EV/21/1075

Re: Property at 9 Pegasus Avenue, Carlisle, ML8 5TN (“the Property”)

Parties:

My Huise Limited, 33a Milton Road, Hampton, Middlesex, TW12 2LL (“the Applicant”)

Mr Marcus Montague, HMP Addiewell, 9 Station Road, West Calder, EH55 8QF (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession under Ground 10 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 6 May 2021;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 August 2018;
3. Notice to Leave dated 31 March 2021;
4. Section 11 Notice to Local Authority;
5. Sheriff Officer’s Certificate of Service of Notice to Leave dated 31 March 2021;

6. Certificate of Service by Sheriff Officer of Tribunal CMD Notification on the Respondent dated 3 June 2021.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 6 July 2021. The Applicant did not participate but was and represented by its Letting Agent. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. The Respondent did not.

The Tribunal noted the Certificate of Service by Sheriff Officer of the CMD Notification on the Respondent. The Tribunal were satisfied that the Respondent had received notification of the CMD and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent to attend and the Tribunal could determine the matter in absence if the Respondent did not.

The Applicant's Letting Agent asked the Tribunal to grant the order for eviction and recovery of possession in absence of the Respondent. She confirmed that no response had been received from attempts to gain access or contact the Respondent. The complaints of anti-social behaviour had died down around the end of March 2021. The Respondent did not appear to be occupying the Property. No rent had been paid since January 2020.

The Tribunal considered the terms of Ground 10:

Not occupying let property

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts

The Tribunal considered the documentary evidence before it and the oral evidence of the Applicant. In so far as material the Tribunal made the following findings in fact:

Findings in Fact

1. The Parties entered into the Private Residential Tenancy Agreement (**PRTA**) commencing 10 August 2018;
2. The Respondent ceased to occupy the Property in early 2021 and has not occupied it since;
3. Notice to Leave dated 31 March 2021 was served on the Respondent by Sheriff Officer on that date;
4. Section 11 Notification was served on the local authority;
5. The Respondent ceased to occupy the Property as their only or principal home in early 2021 and prior to service of the Notice to Leave;
6. The Property not being so occupied is not attributable to a breach of the Applicant's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006;
7. It is reasonable to grant the eviction order sought on account of these facts.

Decision

Having made the foregoing findings in fact the Tribunal considered that it had sufficient information upon which to make a Decision at this stage and the procedure had been fair.

The Tribunal was satisfied that Ground 10 had been established and that on account of the established facts it was reasonable to grant the order sought.

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: Alan Strain

Date: 6 July 2021

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