



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

Reference number: FTS/HPC/EV/21/1338

Order granted on 16 September 2021 in absence of the Respondents

Property: 8 King Street, Carstairs Junction, Lanark, ML11 8RJ

Parties:

Isabella McDonald, 17 Pettinain Road, Carstairs Junction, Lanark, ML11 8RF (“the Applicant”)

John Harry Shaw, 8 King Street, Carstairs Junction, Lanark, ML11 8RJ (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 of schedule 3 to the 2016 Act and ground 12 of part 3 of schedule 3 to the 2016 Act

Background

The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to leave, served on 15 October 2020, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 2.00pm on 16 September 2021. The Applicant was present but unrepresented. The hearing was delayed to allow sufficient time for the respondent to participate, but there was no appearance by or on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The respondent moved into the property on 23 October 2019. On 31 December 2019 the Applicant and the Respondent entered into a private residential tenancy Agreement for the Property.
2. The rent in terms of the Tenancy Agreement was £300 per month.
3. The respondent did not pay any rental in November 2019, nor did he pay rental in February 2020, nor did he pay rental in May 2020. He last paid rental in September 2020. By then, he had rent arrears of £900. At the date the application was submitted there were arrears of rent totalling £1,195.00, which is more than 3 months' rent. At today's date there are still arrears of rental totalling £3,650.00.
4. The Applicant seeks recovery of possession of the Property in terms Ground 12 of part 3 of schedule 3 to the 2016 Act. The rental was four months in arrears at the date the application was submitted. Rental is now 12 months in arrears.
5. There is no suggestion that the respondent is in arrears of rent either wholly or partly because of a delay or failure in the payment of a relevant benefit. It is not argued that it is unreasonable to grant an order for repossession of the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.
6. Before the application was submitted, the applicant had agreed to sell the property for market value to a private purchaser. In July 2021 the applicant instructed estate agents to market the property for sale on the open market after that private arrangement to sell the property fell through. The estate agents have been denied access to the property by the respondent.
7. On 15 October 2020 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 30 May 2021, the applicant submitted an application to the tribunal.

8. The Applicant seeks recovery of possession of the Property in terms Ground 1 of part 1 of schedule 3 to the 2016 Act. On the facts as we find them to be, the applicant

(a) is entitled to sell the let property,

(b) intends to sell the property for market value within 3 months of the tenant ceasing to occupy it, and

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

9. The respondent offers no resistance to this application. Sheriff Officers served notice of this hearing on the respondent on 16 August 2021.

10. It is not argued that it is unreasonable to grant an order for repossession of the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

Reasons for the Decision

11. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 1 of part 1 of schedule 3 to the 2016 Act is established. The respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

12. The basis for possession set out in in terms Ground 12 of part 3 of schedule 3 to the 2016 Act is also established. The respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 and Ground 12 of part 3 of schedule 3 to the 2016 Act.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

Legal Member

16 September 2021