



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/21/1452

Re: Property at 5 (2F1) Links Gardens, Leith, Edinburgh, EH6 7JH (“the Property”)

Parties:

Dr Alison Jane Burns, 39 Eskside West, Musselburgh, EH21 6PR (“the Applicant”)

Mr Iain MacFadyen, 5 (2f1) Links Gardens, Leith, Edinburgh, EH6 7JH (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

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

Introduction

This is an application for eviction under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

The applicant seeks an Eviction Order in respect of arrears of rent.

Service of the application and intimation of the Case Management Discussion (CMD) took place by Sheriff Officers on 27 July 2021. Written submissions were required from the Respondent by 13 August 2021. None were received.

The CMD took place by teleconference on 26 August 2021 at 10.00 am.

The applicant was represented by Mr Derek Rowland, Property Manager, Braemore Sales & Lettings. The respondent failed to join the hearing. There was no barrier to him doing so.

Findings and Reasons

The property is 5 (2F1) Links Gardens, Leith, Edinburgh EH6 7JH.

The applicant is Dr Alison Jane Burns. She is the landlord. The respondent is Mr Iain Macfadyen. He is the tenant.

The parties entered into a private residential tenancy in respect of the property which commenced on 7 December 2017. The rent was stipulated at a rate of £695 per month. With effect from 1 June 2019 the rent was increased to £735 per month.

The respondent has failed to make required payments of rent under and in terms of the lease between the parties. As at the date the application was made to the Tribunal on 15 June 2021, the amount outstanding, including late payment fees, amounted to £6,975.00. This is evidenced in terms of the formal rent statement which discloses the payments as they have fallen due, payments received and the balance outstanding.

By way of Notice to Leave dated 2 December 2020, the respondent was advised of the applicant's intention to recover the property. The ground relied upon is ground 12 contained within Schedule 3 to the 2016 Act, namely that the respondent has been in rent arrears for 3 or more consecutive months. Prior to the application of the provisions of the Coronavirus (Scotland) Act 2020, the relevant notice period in respect of this ground was one of only 2 weeks. At the time that the Notice to Leave was served, the relevant notice period had been increased to one of 6 months.

The Notice to Leave is dated 2 December 2020. In terms of Section 62(5) of the 2016 Act it is to be assumed that the tenant will receive Notice to Leave 48 hours after it is sent. It was to be assumed therefore that the Notice to Leave would be received on 4 December 2020. The 6 month notice period runs from then and would have anticipated to have expired on 4 June 2021. The Notice to Leave requires to specify the day upon which the landlord expects the Tribunal proceedings can start, and in terms of Section 62(4) it is one day after the notice period expires, and therefore it ought to have specified 5 June 2021. The Notice to Leave was not validly completed with the relevant date. The Notice to Leave stated that the first day upon which the landlord expected Tribunal proceedings to commence was on 4 June 2021. The notice period, on the face of it, was one day short.

The Notice to Leave however was served upon the respondent by email and not by post. Documentary evidence has been supplied to the Tribunal which shows that the email was sent to the respondent on 2 December 2020 and, as such, it is reasonably expected that he would have received the Notice to Leave on that date.

In terms of Section 62(5) it is to be assumed that the tenant will receive a Notice to Leave 48 hours after it is sent. It is to be assumed under the Act therefore that the Notice to Leave would not be received until 4 June 2021. The Tribunal however relied upon the Upper Tribunal decision of Sheriff Fleming in UTS/AP/20/0029 [2021] UT 20. The assumption under the 2016 Act regarding deemed service 48 hours after posting can be rebutted. Service upon the respondent took place by email on 2 December 2020. This has been evidenced. The 6 month notice period commenced from then and accordingly ended on 2 June 2021. Under Section 62(4) of the Act, the first day upon which the Tribunal could consider an application for eviction was the following day, namely 3 June 2021. In fact, the Notice to Leave specified 4 June 2021 which was an additional one day.

Furthermore the provisions of Schedule 1 to the 2020 Act do however apply in this case. The notice period was extended from one of 2 weeks to one of 6 months. The notice period was miscalculated by one day only. The relief arising from Paragraph 10 of Schedule 1 to the 2020 Act means that the Notice to Leave is not invalid. The Notice to Leave accompanying the application was submitted to the Tribunal on 15 June 2021. This postdated 5 June 2021. The Notice to Leave can be relied upon by the applicant.

In all of the circumstances the Tribunal concluded that the Notice to Leave relied upon by the applicant was valid for the purposes of the eviction application being made. As earlier referenced there is clear documentary evidence confirming that 3 months' rent arrears were outstanding at the time the proceedings were raised and as at the date of the hearing.

The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 came into force on 30 September 2020. These apply to actions of eviction made to the Tribunal on the grounds of rent arrears. It was evidenced on behalf of the applicant that these Regulations were adhered to. The applicant's letting agents had a face to face meeting with the respondent on 2 December 2020 regarding his rent arrears and personal circumstances. Information was offered to him by way of support. Thereafter on 9 December 2020 a letter offering additional support and clarification was provided to the respondent. This afforded him the opportunity of making contact with a specific team at the applicant's agent's organisation to discuss the matter and making it clear that there was an opportunity to reach a mutual agreeable repayment plan in respect of arrears. Numerous sources of support are brought to the attention of the respondent. Details of his income and expenditure were requested for the purposes of further consideration. The respondent did not take up that opportunity to provide any further information.

In considering the reasonableness of granting the Eviction Order, the Tribunal took into account the respondent's personal circumstances. He is known to be a middle aged man who was in employment until early 2021. It is believed he is now out of work which may or may not be due to the Covid-19 pandemic. The applicant's agents

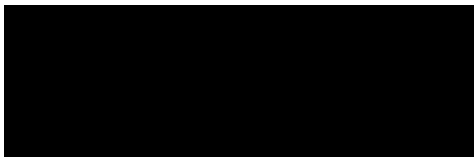
required to have a gas engineer visit the property over the summer of 2021 to complete the necessary gas safety checks. The pre-payment electricity meter had accumulated a £430 debit balance. The gas boiler had no power and had to be disconnected. There is no electricity or heat in the property. The respondent is no longer likely living in the property and is visiting there only periodically, using the property for the purposes of storing items only. The property is not being maintained adequately by the respondent. It was noted there was decayed food and other rubbish left in the property. The windows were left open and the property was insecure. Items of furniture have been left by the respondent in the stairwell and the rear garden of the tenement. Neighbours have expressed concerns regarding the storage of items in common areas. The respondent is known to have no dependents.

The tribunal concluded that the granting of an Eviction Order against the respondent was reasonable.

The respondent is in significant rent arrears. He has not engaged at all with the applicant's agents in relation to those arrears which continue to increase. It is believed that he is no longer occupying the property on a fulltime basis. There are issues of public safety for the neighbours. It has not been possible nor would it be reasonable to expect the applicant or her agents to ascertain further information in relation to the respondent due to his lack of engagement. The applicant cannot be expected to maintain the property for the respondent in all of the circumstances. She is entitled to recover possession of the property.

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/Chair

26 August 2021

Date