



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 (“The Act”)

Chamber Ref: FTS/HPC/EV/21/1644

Re: Property at 33 Meldrum Road, Kirkcaldy, KY2 5HX (“the Property”)

Parties:

Mrs Anne Speed, 3 Seafield Court, Kirkcaldy, KY1 1SN (“the Applicant”)

Mr Francis Bremner, 33 Meldrum Road, Kirkcaldy, KY2 5HX (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

Background

The Applicant seeks an eviction order under grounds 12 of Schedule 3 of the Act. The Applicant has supplied a copy of the tenancy and certain documents intended to establish the current level of the tenant’s rent arrears. The Applicant has produced a copy of the Notice to Leave relied upon and the recorded delivery receipts purporting to show the Notice to Leave having been posted. No proof of the Notice to Leave having been received was produced with the Application. The Application appeared muddled and hard to follow as the rent statements produced were in a less than clear form and much of the documentation supplied amounted to photographs of pages some of which were of no evidential value whatsoever.

Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 20 October 2021. The Application called alongside the related Application with reference FTS/HPC/CV/21/1645 which related to a Payment Order.

The Applicant was present together with a supporter. There was no appearance by or on behalf of the Respondent. The Application and information about how to join the conference call had been properly served on the Respondent by Sheriff Officers and the Tribunal therefore considered it appropriate to proceed in the absence of the Respondent.

The Applicant confirmed that she wished to proceed with the Application but also confirmed that the Respondent had made a payment of £5,300.00 towards rent arrears meaning that a balance of £748.00 remained.

The Tribunal began considering certain preliminary matters noted by the Tribunal.

The first of these was that the Notice to Leave which was supposedly sent to the Respondent was dated 16 February 2021 and provided notice to the Respondent that no Application to the Tribunal would be submitted before 21 August 2021.

It was apparent though that this Application was submitted on 5 July 2021. Prior to today's CMD, the Tribunal had informed the Applicant that the Application was in breach of s54 (1) of the Act and invited the Respondent to consider her position in respect of s52 (4) of the Act which allows the Tribunal to entertain such an application if it considers it reasonable to do so.

The Application was lodged around six weeks before the expiry of the period of notice. The Respondent was asked to explain why the Tribunal should consider the Application notwithstanding this apparent breach.

The Applicant's position was that she had been told to submit it by Fife Council and bemoaned the difficulties involved in navigating these matters as a lay person.

The Tribunal struggled to find a sound reason as to why the Tribunal should consider it reasonable to excuse this breach. The Tribunal considered that it did not appear to be academic as the Applicant had recently settled the majority of their arrears.

There was the possibility that if the Applicant had waited to submit the Application until they were supposed to, then in actual fact the Respondent might not have been in three months' continuous rent arrears at the time the Application was made. In any event it may well have had a significant bearing on the nature of the Application.

Having heard from Ms Speed and having carefully considered the documentation before it, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy in respect of the Property that commenced on 16 December 2017 according to the Applicant and the terms of the tenancy although the Respondent appears to have sent an email disputing the exact date the tenancy started.*
- II. *The Applicant was the landlord and the Respondent was the tenant.*
- III. *The Respondent fell into rent arrears and managed to make a payment of £,5300.00 in the week before today's CMD. There were still some arrears due.*
- IV. *The Applicant had served a Notice to Leave on the Respondent on 16 February 2021. The Notice had confirmed that no Application would be submitted to the Tribunal before 21 August 2021.*
- V. *The Applicant proceeded to lodge the Application with the Tribunal on 5 July 2021 in advance of the notice period provided for in the Notice to Leave.*
- VI. *The Tribunal does not consider it reasonable to excuse this breach or find there to be any valid explanation as to why the Application was lodged in advance of the expiry date of the Notice to Leave.*

Reasons for Decision

The Tribunal considered that it could not conclude that it was reasonable to overlook the clear and significant departure from the terms of s 54 (1). Accordingly, the Tribunal determined that the Application is refused.

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.

A McLaughlin

20 October 2021

Legal Member/Chair

Date