



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/21/1838

Re: Property at 26 Arran Drive, Cumnock, KA18 2BP (“the Property”)

Parties:

Mr Kevin Wright, 32 Endowood Road, Millhouse, Sheffield, S7 2LZ (“the Applicant”)

Mrs Eileen Cameron, 26 Arran Drive, Cumnock, KA18 2BP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Background

1. By application dated 29 July 2021 the Applicant’s representatives Lomond Estate Agents Ltd., Prestwick, applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with Execution of Service, Rent Ledger, Landlord’s authorisation and S11 Form in support of the application.
2. Following correspondence with the Tribunal administration the Applicant’s representatives submitted further documents in support of the application including copy correspondence between the Applicant’s representatives and the Respondent.

3. By Notice of Acceptance dated 2 September 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
4. Intimation of the CMD was sent to the Applicant’s representative by post and was served on the Respondent by Sheriff Officers on 21 September 2021.

The Case Management Discussion

5. A CMD was held by teleconference on 18 October 2021. The Applicant did not attend but was represented by Mr Stephen Spence from the Applicant’s representatives. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD had been given to the Respondent determined to proceed in her absence.
6. The Tribunal confirmed with Mr Spence that the parties had entered into a Private Residential Tenancy agreement in respect of the property that had commenced on 1 November 2019 at a rent of £375.00 per calendar month. The Tribunal noted that in terms of the agreement all notices and formal correspondence was to be sent by hard copy by recorded delivery post or delivered personally. The Tribunal noted that the Applicant’s representatives had instructed Sheriff Officers to serve a Notice to Leave dated 19 January 2021 on the Respondent. The Notice to Leave was served by Sheriff Officers by depositing at the Respondent’s address on 21 January 2021. The earliest date for making an application to the Tribunal was stated as 23 July 2021. The Tribunal pointed out that allowing for two days for delivery as the document was deposited and not delivered personally the correct earliest date should have been 24 July 2021. However, the provisions of the Coronavirus (Scotland) Act 2020 were such that as long as the application for eviction was on or after 24 July 2021 the Notice remained valid. In this case the application had not been made until 29 July 2021 and therefore the Notice to Leave was valid.
7. The Tribunal noted that pre-action correspondence had been sent to the Respondent by email on 23 August 2021. Although this was after the application had been submitted it was prior to the application being accepted by the Tribunal administration.
8. The Tribunal noted that a Section 11 Notice had been sent by email dated 29 July 2021 to East Ayrshire Council.
9. Mr Spence advised the Tribunal that he had visited the Respondent this morning to check she was still resident at the property and had spoken to her there. He said she had given no indication of her intentions and had been generally fairly non-committal. Mr Spence went on to say that as at 1 October 2021 the rent due had risen to £4000.00.

10. The Tribunal referred Mr Spence to the correspondence with the case papers that appeared to suggest that the Respondent may have been withholding rent due to the condition of the property. He submitted that the Applicant had carried out repairs to the property. The windows opened properly. The Applicant had obtained two independent reports that had concluded that the problem was being caused by condensation and that was a lifestyle issue. Mr Spence went on to say that the property had recently been inspected by East Ayrshire Environmental Health Department and he had received an email from them confirming the property met the tolerable standard. Mr Spence sent a copy of this correspondence to the Tribunal administration during the CMD.
11. The Tribunal queried if Mr Spence had any information with regards to the Respondent's personal circumstances and was advised that as far as he was aware she lived on her own. Beyond that he had no information. With regards to the Applicant's circumstances, Mr Spence advised the Tribunal that he had a small portfolio of rental properties. Mr Spence said he had no further information with regards to the Applicant's personal circumstances. He said that the Applicant had carried out repairs at the property at some cost in order to address the Respondent's issues but despite this she had not made payment of the rent she had said she was withholding. The Tribunal noted from the case papers that the property was subject to a standard security.
12. Mr Spence asked the Tribunal to grant the order sought.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 November 2019 at a rent of £375.00 per calendar month.
14. The Respondent stopped paying rent on 12 September 2020.
15. At the time of service of the Notice to Leave by Sheriff Officers on 21 January 2021 the Respondent was due rent of £1125.00.
16. As at 1 October 2021 the Respondent is due rent of £4000.00.
17. A Section 11 Notice was sent to East Ayrshire Council by email on 29 July 2021.

Reasons for Decision

18. The Tribunal was satisfied that a Private Residential Tenancy was in place and that the Applicant had properly arranged for service of a Notice to Leave on the Respondent. The Tribunal was satisfied that the Notice to Leave was properly served by Sheriff Officers on the Respondent and although containing an incorrect date the notice remained valid as the application was made after the earliest date on which an application to the Tribunal could have been made.

19. The Tribunal was also satisfied that the Coronavirus pre-action requirements had been met in correspondence sent by the Applicant's representatives to the Respondent prior to the application being accepted by the Tribunal.
20. The Tribunal took account of the fact that despite being given intimation of the case papers and the date and time of the CMD the Respondent made no effort to submit written submissions or to participate in the CMD. The Tribunal therefore had very limited information before it when considering the Respondent's circumstances. Although it appeared from the case papers that the Respondent had been withholding rent due to the condition of the property it appeared that the Applicant had taken steps to carry out repairs at the property and that there was evidence from correspondence from East Ayrshire Council Environmental Health Department that the property met the tolerable standard.
21. The Tribunal was satisfied that despite works having been carried out at the property the Respondent had continued to not pay rent and the amount due had risen to £4000.00 as at 1 October 2021. The criteria for granting an order for eviction under Ground 12 of Schedule 3 had therefore been met subject to the Tribunal being satisfied that it was reasonable to grant the order in the circumstances.
22. The Tribunal took account of the fact that the Applicant had to meet payment of a standard security over the property and had incurred costs in carrying out repairs to the property at the request of the Respondent. The Tribunal also took account of the fact that the Respondent had not participated in the proceedings despite being given an opportunity to do so. Weighing up the parties' respective interests the Tribunal determined that in all the circumstances it would be reasonable to grant the order sought.

Decision

23. The Tribunal having considered it had sufficient information before it to make a decision without the need for a hearing determined that the Applicant was entitled to an order under Ground 12 of Schedule 3 of 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.

Graham Harding

Graham Harding
Legal Member/Chair

18 October 2021
Date