



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/1856

Re: Property at 83 Gillway, Rosyth, Fife, KY11 2UL (“the Property”)

Parties:

Mr David Scott, 6 Linn Mill, South Queensferry, EH30 9ST (“the Applicant”)

Mr Christopher Murray, 83 Gillway, Rosyth, Fife, KY11 2UL (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The application for an eviction order was accepted by the tribunal on 19 October 2021. The Applicant seeks an eviction Order under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The tribunal paperwork was served on the Respondent by Sheriff Officers service on 27 October 2021.
3. No written representations were submitted by the Respondent.
4. The Applicant provided further documents in response to the Directions issued by the tribunal. Those lodged timeously were considered.

The Case Management Discussion- 2 February 2022

5. A Case Management Discussion (CMD) took place today by conference call. The Applicant was represented by Ms Murray.
6. The Respondent did not participate.
7. The paperwork submitted along with the Application was examined and discussed alongside the recently lodged documents that had been timeously received and crossed over to the Respondent.
8. The Applicant is the registered owner of the Property and landlord.
9. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on or around 27 November 2019, with a start date of 23 December 2019.
10. The rent is £495 per calendar month payable in advance.
11. A Notice to Leave dated 18 August 2020 was served on the Respondent by 'signed for' post.
12. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 8 July 2021.
13. The rent account statements produced were considered. The rent arrears due as at the date of serving of the Notice to Leave was £1593.53. The rent arrears as at today is £10,082.27 including the last rent due on 23 January 2022.
14. The last payment made by the Respondent towards the rent was £142.16 on 7 May 2021. No further payments have been received.
15. The Applicant's Representative sought an eviction order today. She submitted that the Pre-Action Requirements had been complied with as evidenced by the paperwork produced; there was no indication that the payments that had historically been made towards rent came from relevant benefits or that there were any benefits pending as no benefit information was known. It was reasonable to grant the order as the arrears had accrued over a period and the Applicant had done everything he could through his agent to try to resolve the matter but there has been no engagement by the Respondent. The agents had also gone to the Property. There was no answer, but it seemed clear that the tenant was still living there. The rent arrears were significant.
16. Two brief adjournments took place to allow discussion between the tribunal members and to allow the rent arrears figures to be calculated and checked alongside the paperwork. All late payment charges were ultimately disregarded.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on or around 27 November 2019, with a start date of 23 December 2019.
- II. The rent is £495 per calendar month payable in advance in terms of the PRT.

- III. A Notice to Leave dated 18 August 2020 was served on the Respondent by 'signed for' post.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 8 July 2021.
- V. The Pre Action Requirements have been complied with.
- VI. The total arrears figure due today is £10,082.27.
- VII. The last payment to rent was £142.16 on 7 May 2021. No further payments have been received.
- VIII. The tenant being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- IX. The Tribunal is satisfied that it is reasonable that an eviction Order should be made.

Reasons for Decision & Decision

There was no participation by the Respondent, and he had not made any written representations. He had been given a further opportunity to state his position in response to a Direction. The documents received from the Applicant had been crossed over.

The tribunal had regard to all that was said, and the paperwork produced and carefully considered it.

A Private Residential Tenancy (PRT) was entered into between the Parties. The Respondent had undertaken to pay rent.

A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority.

The Tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was satisfied they had been complied with.

The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the discretion to be applied.

The rent arrears have occurred over a long period of time. The rent arrears are substantial. The Respondent was called upon to pay the ongoing rent as well as the arrears or enter into a repayment agreement and had failed to make any payment after May 2021. He was asked to seek financial advice.

It considered whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a 'relevant benefit'. There was no information before the tribunal to indicate that this was the case. The Applicant did not believe it to be so. No information had been presented by the Respondent in relation to his position or financial circumstances.

The Tribunal was satisfied an Order should be made today and it was reasonable to do so. The decision is unanimous.

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.

Susan Christie

Legal Member/Chair

2 February 2022
Date