



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

Chamber Ref: FTS/HPC/EV/21/2180

Re: Property at 68 High Street, Musselburgh, EH21 7BX (“the Property”)

Parties:

Mr William Taylor, 162/1 Drum Brae Drive, Edinburgh, EH4 7SH (“the Applicant”)

Miss Claire Dodds, 68 High Street, Musselburgh, EH21 7BX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (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.

Background

1. By application dated 4 September 2021 the Applicant’s representative Paul Taylor applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representative submitted a copy of the tenancy agreement, Notice to Leave and Section 11 Notice in support of the application. In subsequent correspondence with the Tribunal administration the Applicant’s representative provided an email from the Applicant dated 9 October 2021 explaining his reasons for wishing to live in the property. The Applicant’s representative also provided the Tribunal with a series of photographs showing the condition of the property.

2. By notice of Acceptance dated 5 November 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
3. Intimation of the CMD was sent to the Applicant's representative by post and served on the Respondent by Sheriff Officers.
4. A CMD was held by teleconference on 20 December 2021. The Applicant was represented by Mr Paul Taylor. The Respondent did not attend nor was she represented. The Tribunal noted that although the Applicant was the owner of the property and wished to live in the property he was not according to the tenancy agreement the Landlord. Mr Paul Taylor was named in the tenancy agreement as Landlord/Agent. In the circumstances the Tribunal considered that the application ought to have been brought under Ground 5 of Schedule 3 of the 2016 Act. Mr Taylor requested the Tribunal's permission to allow the application to continue under Ground 5 in terms of Section 52 (5)(b) of the 2016 Act. The Tribunal agreed to continue the CMD to allow the Applicant's representative to submit an application to amend the application and to intimate this to the Respondent.
5. By email dated 20 December 2021 the Applicant's representative submitted an application to amend the ground for eviction of the Respondent to Ground 5 of Schedule 3 of the 2016 Act and intimated this by email to the Respondent.

The Case Management Discussion

6. A further CMD was held by teleconference on 31 January 2022. The Applicant was again represented by Mr Paul Taylor. The Respondent did not attend nor was she represented. The Tribunal being satisfied that the Respondent had been given notice of the CMD determined to proceed in her absence.
7. The Tribunal noted the terms of the proposed amendment and allowed the application to be amended.
8. The Tribunal noted that a Notice to Leave had been sent to the Respondent by email and recorded delivery post on 31 May 2021. The earliest date for making an application to the Tribunal was stated to be 3 September 2021.
9. The Tribunal also noted that a Section 11 notice had been sent by email to East Lothian Council on 5 September 2021.
10. Mr Taylor advised the Tribunal that the Respondent had accrued arrears of rent of just under £3500.00. This had come about due to there being periods when the Respondent had either had difficulties with her Universal Credit or when the rent payments had not been paid directly to him from her benefits. He went on to explain that the last payment of £649.09 had been paid in December 2021 and he did not think a payment was going to be made in

January. Mr Taylor went on to say that since the last CMD his brother, the Applicant had found employment and that had given his mental well being a boost. He said that the Applicant was wishing to start a family but that his current accommodation was not suitable whereas the property had an enclosed garden and was larger and would be suitable. Mr Taylor explained that the previous loss of his job together with not receiving rent had placed a huge financial burden on his brother who would also have to spend thousands of pounds to repair the damage caused by the Respondent once he recovered the property. This had all placed a lot of strain on the Applicant and had affected his mental health.

11. Mr Taylor advised the Tribunal that as far as he was aware the Respondent had a partner and a child aged about 5 or 6 living with her. He was uncertain if the Respondent was continuing to reside at the property although on the last occasion he had attended prior to making the application it appeared that the property was occupied.

Findings in Fact

12. William Taylor is the owner of the property.
13. Paul Taylor is the Registered Landlord of the Property.
14. Paul Taylor and the Respondent entered into a Private Residential Tenancy Agreement in respect of the property that commenced on 22 March 2019.
15. The rent is £649.09 per month.
16. The Respondent has accrued rent arrears amounting to just less than £3500.00.
17. William Taylor wishes to live in the property.
18. A Notice to Leave was served on the Respondent by email and post and dated 31 May 2021.
19. A Section 11 Notice was sent to East Lothian Council by email on 5 September 2021.
20. William Taylor has suffered financial difficulties as a result of being unemployed and through the Respondent accruing rent arrears. This may have had an adverse effect upon his mental health.
21. The Respondent is believed to be living in the property with her partner and young child but no up-to-date information was made available to the Tribunal.

Reasons for Decision

22. Although the Applicant was not the Landlord in terms of the Tenancy agreement, the Tribunal was satisfied that he did as the owner of the property have title to make the application. It was not readily apparent to the Tribunal why the Applicant had not been named as landlord in the tenancy agreement and although Mr Taylor said this had been on the advice of East Lothian Council it had undoubtedly caused substantial confusion and difficulties in dealing with the determination of the application. However given the terms of Section 52(5) of the 2016 Act the Tribunal was satisfied in the circumstances that the interests of justice would be best served by allowing the amendment of the grounds as sought by the Applicant's representative.
23. The Tribunal was satisfied that proper Notice to Leave had been given to the Respondent and that the application to the Tribunal was made after allowing the necessary three month period. The Tribunal was also satisfied that proper intimation of the application had been made to the Local Authority.
24. The Tribunal had to be satisfied in terms of Ground 5 of Schedule 3 that it was the intention of the Applicant to occupy the property as his only or principal home for at least three months and that it was reasonable to issue an eviction order on account of that fact.
25. In considering reasonableness the Tribunal took account of the financial difficulties the Applicant has suffered through being unemployed and through the loss of rent. Although not provided with any medical certificates with regards to the effect this had on the Applicant's mental health the Tribunal had no reason to doubt what was said on the Applicant's behalf. The Tribunal also accepted that the property may well be more suitable for the Applicant should he and his wife intend to start a family. The Tribunal also took account of the fact that despite being given the opportunity to attend a CMD on two occasions and submit written representations the Respondent has not participated in the proceedings. Therefore on balance the Tribunal having carefully considered the circumstances of both parties insofar as was available to it determined that the application for eviction should be granted.

Decision

26. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from 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.

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**Graham Harding
Legal Member/Chair**

**31 January 2022
Date**