



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/21/2192

Re: Property at 50/2 Royal Mile Mansions, North Bridge, Edinburgh, EH1 1QN (“the Property”)

Parties:

Mr Jostein Kvale, Musegaten 74 H101, 4010, Stavanger, 4010, Norway (“the Applicant”)

Mr Geoffrey Traill, 50/2 Royal Mile Mansions, Edinburgh, EH1 1QN (“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 9 September 2021 the Applicant’s representatives, D J Alexander Lettings Limited applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of 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, email to the tenant, Section 11 Notice, Letter of Authority to act and rent arrears statement in support of the application. The Applicant’s representatives subsequently provided an updated rent statement, copy correspondence from the Respondent and copy pre-action emails in compliance with the Rent Arrears Pre-action Requirements (Coronavirus)(Scotland) Regulations 2020.

2. By Notice of Acceptance dated 8 November 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 representatives by post and was served on the Respondent by Sheriff Officers on 18 November 2021.

The Case Management Discussion

4. A CMD was held by teleconference on 20 December 2021. Ms Dayna Greeney represented the Applicant who did not attend. The Respondent did not attend nor was he represented.
5. Ms Greeney explained that the Respondent fell into arrears of rent in July 2020 and to begin with was quite responsive to contact from the Applicant’s representatives and made several promises to make payment but none of these transpired. Ms Greeney said that subsequently the Respondent ceased to communicate with her and colleagues who were trying to arrange entry for an inspection of the property were unable to do so as on three occasions the Respondent said he had Covid.
6. Ms Greeney went on to say that in April 2021 the Respondent said he was going to make a payment to reduce the arrears but this then did not materialise. Ms Greeney confirmed that pre-action emails had been sent to the Respondent on 16 December 2020 and 18 May 2021 and that copies had been provided to the Tribunal. She said that other letters advising tenants of funding that may be available had been sent to all her firm’s tenants including the Respondent.
7. Ms Greeney confirmed that the parties had entered into a Private Residential Tenancy agreement that had commenced on 21 November 2019 at a rent of £1100.00 per calendar month. She confirmed the Notice to Leave had been sent by email to the Respondent on 3 March 2021 and had given six months’ notice. Ms Greeney also confirmed that a Section 11 Notice had been sent to Edinburgh City Council on 9 September 2021 by email. She said that as at 20 October 2021 the rent due amounted to £13200.00 and no more rent had been paid since then.
8. Ms Greeney submitted that the Respondent had been informed of the amount of rent that was outstanding and of the procedures for eviction and had not been in touch with her firm to try to reach an agreement. There had been a lack of correspondence on the part of the Respondent and despite trying to set up payment plans there had been no communication from him leaving no alternative other than to seek his eviction.
9. In response to a query from the Tribunal with regards to the reasonableness of granting the order, Ms Greeney advised that the property was the only property that was rented out by the Applicant and that whilst he had been prepared to give the Respondent some leeway at the start because of the pandemic the arrears had now snowballed with over £13000.00 being due and the Applicant

needed to get the property back in order to start obtaining an income from it as it was now causing him some financial hardship. Ms Greeney said she had no information about the Respondent's circumstances other than she thought he was a single person. She did not know if he had any family living with him in the property or if he was still in employment.

Findings in Fact

10. The parties entered into a Private Residential Tenancy agreement that commenced on 21 November 2019 at a rent of £1100.00 per calendar month.
11. The Respondent fell into arrears of rent in about July 2020 and since then has accrued rent arrears amounting to £13200.00 as at 21 October 2021.
12. The Applicant's representatives sent pre-action emails to the Respondent on 16 December 2020 and 18 May 2021.
13. The respondent was sent a Notice to Leave giving 6 months' notice of the Applicant's intention to raise these proceedings by email on 3 March 2021.
14. A Section 11 Notice was sent to Edinburgh City Council on 9 September 2021.
15. The Applicant is not a professional landlord and does not own any other rented properties.
16. The Respondent has ceased to communicate with the Applicant's representatives or enter into any payment plan.

Reasons for Decision

17. The Tribunal was satisfied from the documents produced and the oral submissions that the parties had entered into a Private Residential Tenancy Agreement that commenced on 21 November 2019 at a rent of £1100.00 per calendar month. It was satisfied that the Pre-action Protocol had been complied with by sending the Respondent the emails of 16 December 2020 and 18 May 2021. The Tribunal was also satisfied that proper intimation of the application had been given to Edinburgh City Council. The Tribunal was also satisfied that from about July 2020 the Respondent fell into rent arrears to the extent that by the time the Notice to Leave was served on the Respondent in March 2021 the Respondent had been in rent arrears for more than three months. The Tribunal was also satisfied that at the CMD an amount was due that was in excess of one month's rent. The Tribunal was therefore satisfied that the terms of Ground 12 of Schedule 3 had been met subject to it being reasonable in the circumstances to grant the order in terms of the provisions of the Coronavirus (Scotland) Act 2020.
18. The Tribunal noted that the Applicant was not a professional landlord and did not have any other rental properties. It took account of the fact that a very substantial amount of rent arrears had accrued as a result of the Respondent

failing to make any regular payments of rent with the last payment being made on 19 October 2020 and that the Respondent had effectively cut off all communication with the Applicant's representatives. In reaching its decision the Tribunal took account of the fact that the Respondent had been given the opportunity to submit written representations to the Tribunal in advance of the CMD but had chosen not to do so nor had he taken the opportunity to attend personally or send a representative to present any argument he might have for opposing the application. Therefore, taking everything into account the Tribunal was satisfied that it was reasonable to grant the order sought.

Decision

19. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property 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**

**20 December 2021
Date**