



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/21/2487

Re: Property at Flat 21, 6 Queensgate, Inverness, IV1 1DA (“the Property”)

Parties:

Drayton (Edinburgh) Limited, 7 Hopetoun Crescent, Edinburgh, EH7 4AY (“the Applicant”)

Mr John Alexander Wilke, sometime of Flat 21, 6 Queensgate, Inverness, IV1 1DA (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Jane Heppenstall (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

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

Background

1. On 12th October 2021, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. The current address of the Respondent was unknown and service was effected by advertisement.
3. No representations were received from the Respondent.
4. A case management discussion was held on 6th May 2022. It was held by audio conferencing.

The case management discussion

5. There was no appearance by the Respondent and the start of the case management discussion was delayed until 10.25 am to allow a representative of the Applicant's agents to participate.
6. Ms Mhairi-Clare Galletta of the Applicant's letting agents was present.
7. The purpose of a case management discussion was explained to her and Ms Galletta invited the tribunal to determine the matter without a Hearing and issue an eviction order on the grounds that the conditions set out in Ground 10, Part 3 of Schedule 3 of the 2016 Act have been met.

Findings in Fact

- (i) Gateway Properties (Scotland) Ltd and the Respondent entered into a private residential tenancy agreement in respect of the Property.
- (ii) The tenancy commenced on 1st March 2020.
- (iii) The weekly rent due under the private residential tenancy was £140.
- (iv) Drayton (Edinburgh) Ltd acquired the Property on 21st May 2021
- (v) The rent arrears currently due are in excess of £3,400.

Finding in Fact and Law

The Property is not being occupied by the Respondent as his only or principal home.

Documents before Tribunal

- (i) Private residential tenancy agreement dated 1st March 2020.
- (ii) Copy Notice to Leave and Sheriff Officer Certificate of Citation both dated 6th September 2021.
- (iii) Copy Section 11 intimation to local authority dated 2nd December 2021.
- (iv) Copy Disposition by Gateway Properties (Scotland) Ltd in favour of Drayton (Edinburgh) Ltd dated 20th May 2021.
- (v) Copies of photographs of the interior of the Property.
- (vi) Certificate of Service by Advertisement.

8. The Law

Section 51 of the 2016 Act:

First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 10, Part 3 of Schedule 3 of the 2016 Act

Not occupying let property

10 (1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).

Schedule 1 of the Coronavirus (Scotland) Act 2020

1 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 51 (2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3) Schedule 3 (eviction grounds) has effect as if—

(h) in paragraph 10 (2) (not occupying let property)—

(i) in the opening words, for the word "must" there were substituted " may ",

(ii) after paragraph (a), the word “and” were repealed,

(iii) after paragraph (b) there were inserted “, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

Evidence

9. The tribunal accepted that the Applicant had purchased the Property and therefore had right to make an application to the Tribunal. The copy Disposition which had been lodged was evidence of the transfer in ownership.
10. The tribunal noted the terms of the Notice to Leave which was dated 6th September 2021 and which stated that proceedings would not commence prior to 5th October 2021.
11. Ms Galletta said that Ballantynes had assumed responsibility for managing the tenancy of the Property when it had been purchased by Drayton (Edinburgh) Ltd on May 2021 and that, at that time, the Respondent was in rent arrears. She said that her colleagues had attempted to engage with the Respondent and, when visiting other properties in the area, had knocked on the door of the Property. She spoke of a growing suspicion that the Respondent had left the Property.
12. Ms Galletta said that the Respondent had said that he was staying with relatives in Aviemore and that emails to him got no response. She said that she thought that the last time he had responded was around August 2021.
13. Ms Galletta referred the tribunal to the Notice to Leave and she said that, following expiry of the notice period, colleagues accessed the Property and formed the view that no one was living in it. She said that there was no food in the fridge and no bedclothes. She said that, although there were some belongings in the Property they were more the kind of things that someone would have discarded rather than be representative of their day to day belongings and personal items. Ms Galletta referred the tribunal to the photographs which she said evidenced that the Property had been abandoned.

Submissions

14. Ms Galletta submitted that there was no requirement for a Hearing. She said that the tribunal had before it sufficient information to make a determination.

She said that the requirements of Ground 10 were met and that the Respondent had left the Property and that he was no longer living in it.

15. Ms Galletta said that it would be reasonable to grant the order of eviction. She said that the longer that the tenancy was in place, the higher the level of rent arrears would be and that this was not in the interest of the Respondent. She also said that it was reasonable for the Applicant to recover the Property to enable it to put it on the rental market so that it could be occupied as a home.

Discussion

16. The tribunal was satisfied that appropriate notice had been given to the Respondent in the Notice to Leave. The appropriate period of notice is twenty eight days. The application was made after the expiry of the notice period.

17. The tribunal considered that there was no requirement for a Hearing to be held and that it had sufficient information to determine the application.

18. The tribunal accepted that Ground 10 was met and that the Respondent was no longer residing in the Property. The details in the application, the representations of Ms Galletta and the photographs were persuasive.

19. The tribunal accepted the submissions of Ms Galletta in the reasonableness of making the order of eviction. It was reasonable for the Applicant to recover the Property and, since the tribunal had accepted that the Respondent had abandoned the Property, it was not unreasonable for the tenancy to be brought to an end.

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.

Martin McAllister

**Legal Member
6th May 2022**