



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/21/2500

Re: Property at 0/1 60 Thornwood Avenue, Glasgow, G11 7PE (“the Property”)

Parties:

Mrs Heather Baba, 164 Weymouth Drive, Glasgow, G12 0ET (“the Applicant”)

Mr Christopher Key, 0/1 60 Thornwood Avenue, Glasgow, G11 7PE (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Introduction

This is an application under Rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”).

Service of the application and intimation of the Case Management Discussion (CMD) was made upon the respondents by Sheriff Officer delivery on 18 November 2021.

The CMD took place by teleconference at 10.00 am on 21 December 2021.

The applicant was represented by Miss Kirstie Donnelly of Messrs T C Young, Solicitors. The respondent failed to participate in the hearing. There was no known barrier to him doing so.

Discussion

The property is Flat 0/1, 60 Thornwood Avenue, Glasgow G11 7PE.

The applicant is Mrs Heather Baba. She is the landlord. The respondent is Mr Christopher Key. He is the tenant.

The parties entered into a private residential tenancy which commenced on 30 June 2020. Rent was stipulated at a rate of £600 per month. A deposit was paid in the sum of £700.

A Notice to Leave was served upon the respondent. The Notice to Leave is dated 2 November 2020. The basis of the proposed eviction was on the basis of ground 12 contained within Part 3, Schedule 3 to the Act. This ground exists if the tenant has been in rent arrears for 3 or more consecutive months.

Prior to the coming into force of the Coronavirus (Scotland) Act 2020 (hereinafter referred to as "the 2020 Act"), the relevant notice period under ground 12 was one of 28 days. After 7 April 2020 the notice period was 6 months. On the application of section 62(5) of the Act, it is to be assumed that the respondent would have received the Notice to Leave 48 hours after it was sent. The 6 month notice period runs from then. After expiry of the 6 month notice period, the earliest day on which the landlord under the tenancy can expect to become entitled to make an application for an eviction order to the First-tier Tribunal is the day following after the day on which the notice expires under application of section 62(4) of the Act. The Notice to Leave, which is dated 2 November 2020, states that an application will not be submitted to the Tribunal for an eviction until before 5 May 2021. This is the required notice period under the 2016 Act, as amended, by the 2020 Act and is the notice period calculated under section 62 of the Act. In the circumstances the Notice to Leave can be relied upon.

The Post Office proof of posting of the Notice to Leave on 2 November 2020 has been produced. The signed for proof of delivery issued by the Post Office reveals that it was not delivered until 7 November 2021 but this does not make the Notice invalid. The Notice was validly completed in accordance with section 62 of the Act and the relevant Notice period has been given. In fact many more months have passed.

As at the date of the hearing the rent outstanding has risen to £7,200. The application is accompanied by a detailed rent statement which reflects this which has not been challenged. The Tribunal found the rent statement credible and reliable and attached weight to it. The Tribunal was satisfied that the ground relied upon for an eviction order had been established.

All eviction grounds are currently discretionary due to amendments introduced by the 2020 Act. The Tribunal proceeded to consider the reasonableness of making an Eviction Order.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020.

The Tribunal was satisfied that the Pre-Action Requirements have been complied with. Relevant advice and support has been given to the respondent including assistance with a tenant hardship loan.

The respondent is a single man with no known dependents or vulnerabilities. He has failed to cooperate with the Applicant or the Tribunal. He is currently £7,200 in rent arrears. He obtained the sum of £5,400 in the form of a tenant hardship loan. Despite receiving these funds under the Scottish Government Scheme he has paid nothing towards the outstanding rent. The Applicant has not been able to gain access to undertake gas safety compliance checks.

It is unacceptable for the respondent to continue to occupy the property in all of these circumstances. It is not reasonable to expect the applicant to maintain the property for the respondent.

The Tribunal determined that it was reasonable that the Eviction Order be made.

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.

Richard Mill

21 December 2021

Legal Member/Chair

Date