



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/21/2564

Re: Property at 28D Baldovan Terrace, Dundee, DD4 6LT (“the Property”)

Parties:

Ms Shirley Berry, c/o 33 albert square, Dundee, DD1 1DJ (“the Applicant”)

Mr Alistair Mckay, 28D Baldovan Terrace, Dundee, DD4 6LT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 28D Baldovan Terrace, Dundee, DD4 6LT under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same

Background

1. This is an application dated 13 October 2021 made by the Applicant’s solicitor for an order for eviction under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties, pre-action letters dated 12 March and 21

March 2021 with proof of delivery, letters dated 14 May 2021 and 12 August 2021, a rent statement to September 2021 showing arrears of £9000, a Notice to Leave dated 2 April 2021 with proof of delivery dated 3 April 2021 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 13 October 2021.

3. On 10 November 2021, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 18 November 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 21 December 2021. The Respondent required to lodge written submissions by 9 December 2021. This paperwork was served on the Respondents by Dean Crane, Sheriff Officer, Livingston on 19 November 2021 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 21 December 2021 by way of teleconference. The Applicant was represented by Mr Campbell from Campbell Boath, solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD for both applications in his absence.
6. The Tribunal had before it the Private Rented Tenancy Agreement between the parties dated 29 April 2020, pre-action letters from the Applicant’s solicitors dated 12 March and 21 March 2021 with proof of delivery, letters dated 14 May 2021 and 12 August 2021, a rent statement, a Notice to Leave dated 2 April 2021 with proof of delivery dated 3 April 2021 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 13 October 2021. The Tribunal noted the contents of all these documents.
7. The Application was heard together with the Applicant’s action for arrears under case reference FTS/HPC/CV/21/2569.
8. Mr Campbell explained they were instructed by the Applicant’s letting agents Martin and Company. With reference to the rent statement he pointed out that the Respondent had paid the first month’s rent of £600 and the deposit of £600 at the start of the tenancy. A further payment of £600 was made on 1 June 2020. Although the rent statement showed a “reversal” figure of £600 on 9 July 2020 this was not to the detriment of the Respondent as it showed a reduction in arrears of £600. Mr Campbell thought this may be that the tenancy deposit was applied to the rent account although he confirmed when

questioned by the Tribunal that the tenancy deposit had been lodged with a tenancy deposit scheme. The Respondent had not engaged with him to pay the arrears. He referred to the correspondence lodged. Arrears had increased to £10200.

9. He further submitted that when they had issued the Notice to Leave on 2 April 2021 the Respondent was more than 3 months in arrears. He submitted that the Respondent probably never had any intention of living in the Property. He believed the Respondent was a joint tenant with his wife of a property at 30 Glenconnor Drive, Dundee and that the lease was signed in expectation that the Respondent's daughter was about to be released from prison in order to secure a place for her to live on her release. He had spoken to the Respondent's daughter, but she had no intention of signing a lease. Mr Campbell explained he had contacted Ad Action and Donna Burns, the Respondent's daughter's Community Service Officer to see whether they could assist. Ad Action advised they would refer her to Shelter if she were evicted and Ms Burns explained the Respondent's daughter had not engaged with her. He had also contacted Universal Credit, but the Respondent was not entitled to Universal Credit. Mr Campbell listed numerous visits to the Property and to the property at 30 Glenconnor Drive, Dundee all with the intention of getting the Respondent to pay arrears, but to no avail. The Respondent did not live at the Property. His daughter was the only occupant. The Respondent had promised to return the keys to the Property in about March 2021 but had failed to do so. In all the circumstances, Mr Campbell submitted he had established a case under Ground 12 of Schedule 3 of the 2016 Act and that it was reasonable to evict.

Findings in Fact

10. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 29 April 2020 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £600.
11. The Respondent has fallen into arrears of rent. He has not made any payments towards rent since 1 June 2020 when he paid £600. The Applicant has made efforts to obtain payment of the arrears from the Respondent. The Respondent has ignored the Applicant's solicitor's correspondence. The arrears have increased to £10200 as at 21 December 2021.
12. On 2 April 2021, the Applicant served a Notice to Leave on the Respondent by Recorded Delivery requesting that she remove from the Property by 8 October 2021.
13. At the time of serving the Notice to Leave the Respondent had been in arrears of rent for more than three consecutive months.

14. The Applicant had sent numerous letters both pre and post the Notice to Leave, to the Respondent in compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. There had been no response to these letters from the Respondent and no attempts by the Respondent to clear the arrears or pay ongoing rent.
15. The Respondent's daughter resides in the Property. The Respondent does not reside at the Property and is understood to be a joint tenant at 30 Glenconnor Drive, Dundee
16. The Respondent advised he would return the Property keys in March 2021 but failed to do so.
17. There are no outstanding benefits issues that the Applicant is aware of.
18. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Dundee City Council on 13 October 2021.

Reasons for Decision

19. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
20. Further the Tribunal considered the submissions made by Mr Campbell. The Tribunal noted the content of the rent statement lodged which showed the Respondent had last paid rent to her account on 1 June 2020. The Applicant produced evidence of persistent non- payment of rent with reference to the tenancy agreement, correspondence with the Respondent and the rent statement lodged. The Tribunal appreciated that Mr Campbell was in a position to speak to the attempts he had personally made to get the Respondent to pay the arrears and accepted the veracity of his statements as being factually correct.
21. The Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Campbell that the facts were not in dispute and that there was no need to proceed to a full hearing for evidence to be led. In particular it is not disputed

that the Respondent had been in rent arrears from June 2020 and was in arrears of more than 3 months when the Notice to Leave was given on 2 April 2021 and at the time the Tribunal considered the application.

22. The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 3 and 4. The Notice to Leave was given on 2 April 2021 and thus the notice period stated in Section 54 (2) (b) (iii) of 6 months applies as further defined in Section 64 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave met these requirements.
23. The application to the Tribunal was made after 6 October 2020 and accordingly the provisions of Ground 12 (3B) of schedule 3 of the 2016 Act apply with regard to the compliance with the pre-action requirements introduced by The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and specifically Regulation 4 in relation to private residential tenancies. The Tribunal was satisfied that the letters sent to the Respondent prior to the service of the Notice to Leave gave the Respondent an opportunity to enter into a repayment plan with clear information as to the amount of arrears and signposting him to advice agencies. The Tribunal were satisfied the Applicant had complied with the pre action requirements.
24. Compliance with the pre action requirements is just one factor the Tribunal requires to consider when determining whether it is reasonable to evict. Mr Campbell's submission on the fact the Respondent had not paid any rent since 1 June 2020 was compelling, particularly against the background that he believed the Respondent to live at another tenancy with only the Respondent's daughter living in the Property. Mr Campbell had made a concerted and continued effort to get the Respondent to pay. He had gone above and beyond what was expected of a reasonable landlord. The Tribunal accepted Mr Campbell's submission that contractually the Respondent had failed to comply with his obligation to pay rent, with no indication why that should be. The Tribunal also accepted there were no outstanding benefit issues and that a Section 11 Notice had been served.
25. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

26. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

S. E

21 December 2021

Legal Chair

Date