



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/22/0637

Re: Property at 181f George Street, City Centre, Aberdeen, AB25 1HX (“the Property”)

Parties:

Mrs Linda Brechin, 33 Charleston Crescent, Cove, Aberdeen, AB12 3DZ (“the Applicant”)

Miss Caitlin Ramsay, 181f George Street, City Centre, Aberdeen, AB25 1HX (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)

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 in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has been in rent arrears for three or more consecutive months, and it is reasonable on account of that fact to grant the order.

The decision of the Tribunal was unanimous.

Background

1.This application for an eviction order was received by the Tribunal on 2nd March 2022 and accepted on 4th May 2022.A case management discussion was first fixed for 15th July 2022 at 2pm.

2.The Case Management Discussion was attended by Miss Lisa Campbell of Stonehouse Lettings as representative of the Applicant. There was no appearance by or on behalf of the Respondent. Miss Campbell asked the Tribunal to proceed in her absence.

3.The Tribunal noted that there was an execution of service of the Application and papers on the Respondent by Sheriff officers putting these through the letterbox at the property on 25th May 2022, after ascertaining that she still lived there. Miss Campbell for the Applicant indicated that the Applicant had been unable to determine if the Respondent was still in occupation at the property as although she had indicated she would be moving out some time ago she had never returned keys to them and there had been no contact from her at all. It had not been possible to obtain her agreement to attend at the property as there had been no communication and it was not possible to attend the property to consider any signs of occupation given that this was a top floor flat.

4.The Tribunal was satisfied that in the absence of evidence that the Respondent had ceased to occupy the property that the application had been lawfully served and fair notice given to the Respondent. The Tribunal was prepared to proceed in the absence of the Respondent.

5.The Tribunal had sight of the Application, a Notice to Leave, an email apparently intimating the Notice to Leave, a rent statement, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, and various pieces of e mail correspondence between the Letting agency, the Applicant, and the Respondent. There was no documentation regarding service of the section 11 Notice despite a number of requests from the Tribunal and a Direction requiring it to be lodged.

6.Miss Campbell indicated that this had been dealt with by her colleague who was on holiday and asked for time to recover an email sent by him. Despite looking for this, it could not be found during the case management discussion and Miss Campbell could not confirm if the document had been emailed or sent by post. The Tribunal chair explained that it was a requirement of the legislation that the Section 11 Notice had been intimated and that the Tribunal required to see the proof of intimation to the local authority. Miss Campbell requested that the case management discussion be continued to allow her to produce the document. The Tribunal was prepared to continue for this purpose.

7.There was no discussion on the merits of the eviction ground being used. Miss Campbell also confirmed that the paper apart which had been referred to in the application but had not arrived with the application, despite the Tribunal's Direction to lodge it, was not required by the Applicant as part of the application.

8.The case management discussion was continued until 21st October 2022 at 10am and the Tribunal issued a Direction to the Applicant's representative to lodge proof of intimation of the Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to the local authority. This was submitted to the Tribunal on 22nd August 2022.

9.At the case management discussion on 21st October 2022 the Applicant did not attend but was again represented by Miss Lisa Campbell of Stonehouse Lettings. There was no appearance by or on behalf of the Respondent. Miss Campbell advised the Tribunal that neighbours had advised her colleague that the Respondent had not been seen since the "tail end " of 2021 but she had made no contact with them and had never returned keys or confirmed that she was vacating the property The Tribunal had intimated the date of the case management discussion on 21st October to the Respondent at the property address by recorded delivery post sent on 9th September 2022 and this had not be returned by the post office. The Tribunal was satisfied that

the Respondent had received fair notice of the date and that the Tribunal could proceed in her absence.

10. Miss Campbell advised the Tribunal that rent arrears had reached the sum of £6460 on a monthly rental of £380. Only the first month's rent had been paid when the tenancy commenced on 26th April 2021. The Respondent had been the subject of routine pre-tenancy checks and was working when the tenancy commenced and had been a tenant previously. She had also passed all required checks relating to affordability, income and credit. The Letting Agents advised that they had received a positive reference from her previous landlord and that they had no information to suggest that she was in receipt of benefits.

11. A large number of attempts had been made by email, letter and visit to the property to engage with the Respondent regarding the rent arrears but these had not been successful, the most recent attempt at contact at the property being in August 2022 when it appeared she was not present. Two letters in terms of the Rent Arrears Pre Action-Protocol requirements had been sent to the Respondent on 27th October 2021 and 12th January 2022 and a third letter had been put through the letterbox at the property on 3rd November 2021. Despite all efforts to engage with the Respondent regarding the rent arrears, including at one stage the offer of a payment plan she had not engaged with the Letting Agents on this issue and the last direct contact had been when she took on the tenancy.

12. There had been some contact via email from the Respondent advising of an intention to leave in February 2022 and emails were sent by Letting Agents regarding the return of the keys to the property where the Respondent was advised to deposit the keys in the mailbox in the car park at the rear of the building, but the keys were not returned.

13. The Tribunal had sight of a Notice to Leave which appeared to be in proper form and had been sent to the Respondent giving the appropriate notice period.

14. The Tribunal had sight of a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 which had been intimated to Aberdeen City Council in August 2022.

15. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

16. The Applicant and Respondent entered into a private residential tenancy at the property with effect from 26th April 2021.

17. The monthly rental is £380 payable in advance.

18. The Respondent paid the first month's rent and has paid no rent at all since then.

19. A Notice to Leave in proper form and giving the Respondent appropriate notice of the ground by which, the Applicant was seeking to evict her, was sent to the Respondent in August 2021 when rent arrears had accrued over three consecutive months.

20. Rent arrears at the property have reached the sum of £6460 as of 21st October 2022.

21. Two letters in terms of the pre action protocol requirements were sent to the Respondent by Letting Agents on behalf of the Applicant and one was put through the letterbox at the property.

22. Letting agents on behalf of the Applicant sent a notice in terms of the Homelessness etc (Scotland) Act 2003 to Aberdeen City Council in August 2022.

23. Letting Agents were contacted by the Respondent in February 2022 suggesting that she would leave the property, but keys were not returned by her despite requests that this be done.

24. Rent arrears at the property have accrued over consecutive months since May 2021.

25. Rent arrears have not accrued due to any failure or delay in the payment of benefit to the Respondent.

26. All efforts made on behalf of the Applicant to engage with the Respondent regarding the rent arrears accrued at the property have been unsuccessful.

Reasons for Decision

27. The Tribunal was satisfied that the eviction ground was established, and that the Respondent was in rent arrears over three consecutive months as at the date of service of the Notice to Leave and at the hearing. Arrears of rent had continued to accrue as no rent had been paid after April 2021. The Notice to Leave and S11 notices were in proper form and had been properly served. Efforts had been made to comply with pre action protocol requirements and the tribunal was satisfied that the order was necessary. Although there was a suggestion that the Respondent might be leaving the property in February 2022 the keys had never been returned and Sheriff officers had made enquiries which established that the Respondent lived there in May 2022 when Tribunal papers had been served. A recorded delivery notification from the Tribunal sent to the Respondent at the property in September 2022 had not been returned.

28. Given the level of rent arrears accrued in this application it appeared reasonable to grant an eviction order. The Tribunal noted that there had been no appearance by or on behalf of the Respondent to suggest that it was unreasonable to grant the order.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the

Respondent has been in rent arrears for three or more consecutive months, and it is reasonable on account of that fact to grant the order.

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.

21st October 2022

Legal Member/Chair _____

Date