



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 (“The Act”)

Chamber Ref: FTS/HPC/EV/22/1019

Re: Property at 39 King Edward Street, Markinch, Fife, KY7 6AN (“the Property”)

Parties:

Fiona Souter, Woodlands House, Markinch, Fife, KY7 6HE (“the Applicant”)

Ms Wilma Mortimer, 39 King Edward Street, Markinch, Fife, KY7 6AN (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order in favour of the Applicant against the Respondent.

Background

The Applicant seeks an Eviction Order based on Grounds 3, 11, and 12 of Schedule 3 of the Act. The Application is accompanied by a Notice to Leave based on these grounds; proof of this notice having been served on the Respondent; a Notice under s11 of the Homelessness (Etc) (Scotland) Act 2003; evidence of having complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020; a rent statement and correspondence exchanged between the parties.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 28 July 2022. The CMD called alongside a related application in respect of a Payment Order between the same parties. The Applicant was present on the call. There was no appearance by or on behalf of the Respondent. Sheriff Officers had served the Application and information about how to join the conference call on the Respondent on 15 June 2022. The Tribunal therefore decided to proceed in the absence of the Respondent.

The Tribunal discussed the Application with the Applicant and asked questions both to assess the merits of the grounds of eviction relied on and the reasonableness or otherwise of granting any order. Having done so, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement which provided for the Applicant letting the Property to the Respondent under a Private Residential Tenancy;*
- II. *The Private Residential Tenancy commenced on 11 December 2017;*
- III. *The contractual monthly rent under the tenancy was initially £395.00 and was increased to £410.00 in or around 2019;*
- IV. *For the first two years or so, the Respondent regularly made the monthly payments.*
- V. *From 2019, the Respondent fell into rent arrears and would regularly miss payments resulting in rent arrears accruing;*
- VI. *The Respondent on some occasions was able to reduce these arrears by making over payments of rent but arrears had increased to the sum of £1,963.00 as at 31 March 2022.*
- VII. *The Respondent has not made any payment to the Applicant whatsoever since January 2022 and has failed to engage with the Applicant or provide any reason as to why no monthly rental payments are being made;*
- VIII. *The Respondent owes the Applicant a sum in excess of one month's worth of rent and had been so in arrears for a period of in excess of three months at the time the Applicant served a Notice to Leave on the Respondent on 28 May 2022;*

- IX. *The Notice to Leave was completely served on the Respondent by the Applicant and provided the Respondent with the relevant statutory notice period prior to the bringing of this Application;*
- X. *The Notice to Leave also relied on Grounds 3 and 11 of Schedule 3 of the Act;*
- XI. *The Applicant wishes to refurbish the Property on account of the poor condition the Property is in as a result of the Respondent's occupation;*
- XII. *The Applicant has regularly inspected the Property and found it to be extensively damaged by the Respondent's smoking. The Property has also been extensively damaged by cat faeces;*
- XIII. *The Respondent has breached Condition 35 of the tenancy by smoking in the Property despite requests by the Applicant to desist;*
- XIV. *The Respondent is a single female in her fifties who works locally as a taxi driver. There is nothing to suggest that there is any valid reason as to why the Respondent has stopped making any payments or engaging with the Applicant;*
- XV. *The Applicant has to pay £200.00 each month in respect of a mortgage over the Property meaning that the Applicant is operating at a loss as a result of the Respondent's failure to pay rent.*
- XVI. *The Respondent owes the Applicant a sum in excess of one month's worth of rent and has been so in arrears for a period of in excess of three months as at today's date.*
- XVII. *It is reasonable that an Eviction Order is granted.*

Decision

Having made the above findings in fact, the Tribunal found Ground 11 of Schedule 3 of the Act to be established and that it was reasonable to make an Eviction Order.

The Tribunal considered that potentially Grounds 3 and 12 could be established but that further evidence would have been necessary before making any final decision.

Having decided though that Ground 12 was established and having assessed that it was reasonable to grant the Application, the Tribunal considered it unnecessary to further consider the merits of Grounds 3 and 12, albeit they did inform an assessment of the general reasonableness or otherwise of granting the Application.

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.

Andrew McLaughlin

Legal Member/Chair

Date: 28 July 2022