



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/22/1282

Re: Property at 192 Montford Avenue, Glasgow, G44 4NY (“the Property”)

Parties:

Angela Brennan, John Blyth, 27 Glenlyon Place, Rutherglen, G72 5PL (“the Applicant”)

Mr Thomas Hammell, 86 Croftmont Avenue, Glasgow, G44 5LH (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 4th May 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based upon to ground 10 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
 - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 26th May 2019;
 - b. Notice to Leave signed 11th March 2022 stating an application would not be submitted to the Tribunal before 11th April 2022;
 - c. Section 11 notice noting proceedings would not be raised before 4th May 2022; and

- d. Copy email dated 6th May 2022 serving Notice to Leave upon the Respondent
3. The Tribunal also had before it a copy of the title deeds numbered GLA20362.
4. On 29th August 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 12th October 2022 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 19th September 2022.
5. On 30th August 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox. This was evidenced by Certificate of Citation dated 30th August 2022.

The Case Management Discussion

6. A CMD was held on 12th October 2022 at 2pm by teleconferencing. The Applicant was represented by Mr John Gildea, Solicitor Advocate, John Jackson & Dick Ltd. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
7. Mr Gildea told the Tribunal that there has been no contact from the Respondent for months. It is believed that he moved out of the Property in April but the Applicants wanted to take a belt and braces approach. The Property remains empty and the Applicants have marketed it for sale. Sheriff Officers were able to trace the Respondent to a nearby property. He has been written to there but to no avail. The arrears continue to accrue on the Property as no payments have been made to the rent account. An order for payment was awarded by a separate tribunal in May 2022. Mr Gildea told the Tribunal that a wage arrestment has been placed on the Respondent’s wages. This was done two months ago though the payments have not yet commenced to the Applicant.
8. The Tribunal were satisfied that the Respondent is no longer living in the Property as his main or principal home.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced 26th May 2019.
10. The Respondent confirmed by email on 21st and 28th April 2022 that he was no longer living in the Property and intended to return his keys. He also stated that he had moved all his items out of the Property except for a sofa.
11. The Property is vacant and the Respondent has removed all his items except for a sofa.

12. The Applicant's representative instructed sheriff officers to trace the Respondent. They found him to be living in a nearby property.
13. There are arrears accruing on the Property. The Respondent is not paying to the rent account.
14. The Respondent is not living in the Property as his main or principal home.

Decision

15. The Tribunal found that ground 10 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

12th October 2022

Legal Member/Chair

Date