



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/22/1970

Re: Property at 1/R 37 Nelson Street, Largs, KA30 8LN (“the Property”)

Parties:

Mr Thomas Murray, 4 Bankhouse Crescent, Largs, KA30 9PH (“the Applicant”)

Mr Gary Cassidy, 1/R 37 Nelson Street, Largs (“the Respondent”)

Tribunal Members:

Graham Harding (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 the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 1 June 2022 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of the tenancy agreement, Notice to Leave, Section 11 Notice, rent payment schedule, bank statements and email correspondence in support of the application.
2. Following further correspondence between the Applicant and the Tribunal administration, by Notice of Acceptance dated 8 August 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 2 September 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 18 October 2022. The Applicant attended in person. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD having been given to the Respondent determined to proceed in his absence.
5. The Tribunal ascertained from the Applicant that the parties had entered into a Private Residential Tenancy that had commenced on 26 February 2021 at a rent of £350.00 per calendar month. The Tribunal noted that the Respondent had fallen into arrears of rent and that on 19 August 2021 the Applicant had sent a Notice to Leave to the Respondent by email citing grounds 11 and 12 of Schedule 3 of the 2016 Act as the reasons for seeking the eviction of the Respondent. The Tribunal noted that the Notice provided that proceedings would not be commenced before 18 February 2022. The Tribunal also noted that at the date of service of the Notice to Leave the Respondent owed the Applicant rent amounting to £1261.95.
6. The Tribunal noted that the Applicant had sent a Section 11 Notice to North Ayrshire Council by email on 1 October 2021.
7. The Tribunal noted that the Respondent currently owed rent amounting to £5931.18.
8. The Tribunal sought to ascertain if the Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Applicant advised the Tribunal that he had sent several emails to the Respondent regarding his arrears. He said he had also forwarded an email from North Ayrshire Council regarding the Scottish Government's Tenants Grant Fund to the Respondent on 7 December 2021. The Respondent had replied that he did not need help.
9. The Applicant advised the Tribunal that he owned nine rented properties in Largs. The Respondent's property was subject to a Standard Security and the Applicant said he had to pay the mortgage every month even although he was receiving no rent. In response to queries from the Tribunal as regards the Respondent's circumstances the Applicant said that the Respondent was single and lived in the property himself although his girlfriend sometimes stayed over. The Applicant said that the Respondent had been in receipt of Universal Credit at one point but had also worked in warehouses in Largs. He did not know his current benefits situation and had not been in communication with him for some time. The Applicant said he believed the Respondent remained in the property. He said the Respondent was not disabled.

Findings in Fact

10. The parties entered into a Private Residential tenancy that commenced on 26 February 2021 at a rent of £350.00 per calendar month.

11. The Respondent fell into arrears of rent in May 2021.
12. The Applicant served a Notice to Leave on the Respondent by email on 19 August 2021.
13. The Applicant intimated a Section 11 Notice to North Ayrshire Council by email on 1 October 2021.
14. The Respondent currently owes rent of £5931.18.
15. The Applicant sent the Respondent information about the Scottish Government Tenants Grant Fund.
16. The Applicant is a professional landlord and owns 9 rental properties in Largs.
17. The property is subject to a Standard Security.
18. The Respondent is single with no dependants living at the property.

Reasons for Decision

19. The Tribunal was satisfied from the Written representations and the Applicants oral submissions that the parties entered into a Private Residential tenancy that commenced on 26 February 2021 at a rent of £350.00 per calendar month. The Tribunal was also satisfied from the information provided that the Respondent had fallen into rent arrears and had been served with a Notice to Leave by email on 19 August 2021. Although the Notice to Leave ought to have said that proceedings would not be commenced before 22 February 2022 that was not fatal to its validity due to the provisions of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") as the application was not made until 1 June 2022.
20. The Tribunal was satisfied that proper intimation of the proceedings had been made to North Ayrshire Council by way of a Section 11 Notice.
21. The Tribunal was also satisfied that in terms of Ground 12 of Schedule 3 of the 2016 Act the Respondent had been in arrears of rent for three months at the time of serving the Notice to Leave and there was more than the equivalent of one month's rent outstanding at the date of the CMD. The Tribunal was therefore satisfied that the Applicant would be entitled to an order for eviction subject to it being reasonable to grant the order in terms of the 2020 Act and the Coronavirus Recovery and Reform (Scotland) Act 2022.
22. In reaching a decision with regards to reasonableness the Tribunal took account of the fact that despite being given the opportunity to submit written representations and attend the CMD the Respondent chose to do neither. The Tribunal also took account of the information provided by the Applicant to the Respondent regarding the assistance that might be available to him with his rent. In balancing the rights of both parties, the Tribunal took account of the very significant level of rent arrears and the fact that the Applicant had to

continue to pay his mortgage on the property. It appeared that the Respondent was single with no dependants and in all the circumstances the Tribunal was satisfied that it was reasonable to grant the order sought.

Decision

23. The Tribunal having carefully considered the written representations and documents together with the oral submissions and being satisfied that it has sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.

Graham Harding

Legal Member/Chair

18 October 2022
Date