



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/22/2583

Re: Property at Flat 48, 5 Shrubhill Walk, Edinburgh, EH7 4FG (“the Property”)

Parties:

Shrubhill NHT LLP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Robert Adam Smith, Flat 48, 5 Shrubhill Walk, Edinburgh, EH7 4FG (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (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”) determined to grant an order for eviction.

Background

1. By application dated 27th July 2022 the applicant seeks an order for eviction, relying on ground 12 in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Letter to the respondent with Notice to Leave and Guidance dated 21st December 2021
 - Rent statement
 - Letter to respondent dated 25th July 2022

- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003 dated 25th July 2022.
3. The present application was conjoined with an application seeking an order for payment against the respondent under Tribunal reference FTS/HPC/CV/2584.
 4. A case management discussion (“cmd”) was assigned for 7th November 2022.
 5. On 4th October 2022 the applicant’s representative lodged an updated rent statement showing outstanding rent arrears as at 1st October 2022 to be £13,453.66.

Case management discussion – 7th November 2022- teleconference

6. The applicant was represented at the cmd by Mr Caldwell, solicitor of Patten & Prentice solicitors. The respondent was not present or represented. The Tribunal was satisfied that proper notice of the cmd had been served on the respondent and determined to proceed with the cmd in his absence.
7. Mr Caldwell advised that arrears had increased to £14,154.76. He explained that as per the rent statement which had been lodged, the respondent had not paid any rent since September 2021. Mr Caldwell explained that the applicant had a large portfolio of rental property. The rent was increased to £701.10 per calendar month in June 2022. The rent statement reflected that increase.
8. Mr Caldwell advised that the respondent had been employed as a plumber at the time the tenancy commenced. His income from employment at that time had been £28,500 basic salary. The property was a two-bedroom flat. At the time the tenancy commenced, the respondent had told the applicant that he required a two-bedroom property as he had a son, aged 13 whom he had contact with and who lived nearby.
9. Mr Caldwell advised that it was unclear whether the respondent still lived in the property. The last formal contact made by the respondent to the applicant was in October 2020 and as could be seen from the rent statement no rent had been paid since September 2021. The respondent had not responded to, a letter sent in December 2021 with the Notice to Leave. A further letter was sent on 25th July 2022 providing information about the level of rent arrears, a copy of the tenancy agreement and guidance on how to access advice and assistance to deal with the arrears issue as required under the pre-action requirements.

10. Mr Caldwell submitted that due to the increasing arrears, the level of the debt and the lack of any contact from the respondent, it was reasonable that an order for eviction be granted.

Findings in fact

11. Parties entered in a Private Residential Tenancy agreement with a commencement date of 8th February 2019.

12. Monthly rent due in terms of the agreement was initially £664.07 and had increased to £701.10 in June 2022.

13. The respondent had been in arrears since January 2020 not paid any rent since September 2021.

14. Arrears as at 1st October 2022 amounted to £13,453.66.

15. The applicant complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.

16. Ground 12, in schedule 3 of the 2016 has been established.

Reasons for the decision

17. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Mr Caldwell's submissions at the cmd.

18. The Tribunal determined that the correspondence sent to the respondent complied with the pre-action requirements. The respondent had been provided with information relating to the rent arrears and guidance on how to access assistance.

19. The Tribunal was satisfied that the arrears at the property amounted to £14,154.76 as at the date of the cmd and that as there had been arrears in excess of three months, ground 12 had been established.

20. The Tribunal required to consider whether it was reasonable to grant an order for eviction. The Tribunal took into account the information provided by Mr Caldwell in relation to the respondent's personal circumstances. The Tribunal noted the high level of arrears, which continued to rise and that no contact or payment had been made by the respondent for a considerable period of time.

The Tribunal took into account that the respondent had not taken any steps to oppose the applicant or lodge a defence.

21. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for eviction.

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.

M. C. Kelly

Legal Member/Chair

7th November 2022

Date