



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/22/3071

Re: Property at 4/3 Oxfords Street, Edinburgh, EH13 9JY (“the Property”)

Parties:

Mrs Ann Jackson, 37 Sheil Hall Crescent, Rosewell, Midlothian, EH24 9DD (“the Applicant”)

Mr Moave Bulaveiloti, 4/3 Oxfords Street, Edinburgh, EH13 9JY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Dickson (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 an amended application dated 28 September 2022 the Applicant’s representatives Rent Locally, Edinburgh applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted copies of the tenancy agreement, Notice to Leave, Section 11 Agreement with proof of service, copies of emails to the Respondent, a rent statement and pre-action letters to the Respondent.
2. By Notice of Acceptance dated 7 November 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 December 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 7 February 2023. The Applicant did not attend but was represented by Mrs Clare Todd of the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in his absence.
5. Mrs Todd confirmed that a Notice to Leave had been emailed to the Respondent on 18 July 2022 and a further copy had been posted through his letterbox. She advised the Tribunal that the Respondent had a history of rent arrears but in May 2022 the local authority had contributed £3500.00 towards the arrears. Despite this the Respondent had continued to fall into more arrears and the landlord had instructed that a Notice to Leave be served. Mrs Todd went on to say that since then the arrears had continued to increase and the amount currently due by the Respondent now stood at £2800.00.
6. The Tribunal noted that the Applicant's representatives had intimated the proceedings by sending a Section 11 Notice to the local authority on 26 August 2022 and that pre-action letters had also been sent to the Respondent advising him where he could seek advice.
7. Mrs Todd advised the Tribunal that previously the local authority had contacted the Respondent's employers to establish whether he could afford the rent and had been told that he could. She said that as far as she was aware he was in full time employment and was never at home when she carried out an inspection. She said the Respondent lived on his own at the property. She said that the Applicant's representatives had tried to reach an agreement with the Respondent to clear the arrears but he had not kept to any arrangements. She said they had given the Respondent as much help as they could but it was having an adverse effect on the Applicant particularly as the property had been flooded four weeks earlier and the Applicant would have costs to meet from that. She said she did not feel the Respondent was helping himself. She explained that the Applicant only had the one let property managed through her firm. She submitted it was reasonable that the order be granted.

Findings in Fact

8. The parties entered into a Private Residential Tenancy that commenced on 17 July 2019 at a rent of £750.00 per calendar month
9. The Respondent has fallen into arrears of rent.

10. A Notice to Leave was served on the Respondent by email on 18 July 2022 under Ground 12 of Schedule 3 of the 2016 Act.
11. Pre action letters were sent to the Respondent by the Applicant's representatives in August 2022.
12. A Section 11 Notice was sent to Edinburgh city Council by email on 26 August 2022.
13. At the date of the CMD the Respondent owed rent of £2800.00.

Reasons for Decision

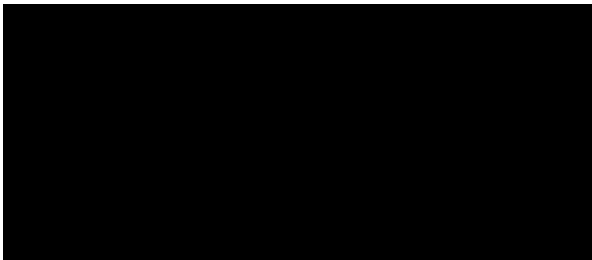
14. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions that the parties entered into a Private Residential tenancy that commenced on 17 July 2019 at a rent of £750.00 per calendar month. The Tribunal was also satisfied that over a lengthy period the Respondent failed to make regular rent payments resulting in substantial rent arrears accruing much of which were cleared by a local authority grant in May 2022. Since that time rent arrears have continued to accumulate.
15. The Tribunal was satisfied from the documents produced and the oral submissions that a valid Notice to Leave was properly served on the Respondent and at that time the Respondent had been in arrears of rent for three consecutive months and that at the date of the CMD the equivalent of more than one month's rent was outstanding.
16. The Tribunal was also satisfied that the Applicant's Representatives had complied with the Scottish Government's pre-action protocol and appropriate correspondence had been sent to the Respondent and that the local authority had been served with a Section 11 Notice.
17. The Tribunal was therefore satisfied that procedurally the Applicant had met the test for an order for eviction being granted subject to it being reasonable to do so in terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022. In reaching its decision in this regard the Tribunal took account of the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent chose to do neither. The Tribunal also noted that apparently the Respondent was in employment but was still allowing his rent to fall into arrears. It appeared that the Applicant was not a professional landlord and there was a heritable security over the property. In addition there had been recent damage to the property the cost of which required to be met by the Applicant. In all the circumstances the Tribunal was satisfied that it was reasonable to grant the order sought.

Decision

18. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing determined that the Applicant was 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.



Legal Member/Chair

7 February 2023
Date