



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/22/3480

Re: Property at 110 Flat 5 Nicolson Street, Edinburgh, EH8 9EJ (“the Property”)

Parties:

Mr Alan Strang, Haven House 55 Seafield Street, Cullen, Moray, AB56 4SU (“the Applicant”)

Mr Maciej Leszczak, 110 Flat 5 Nicolson Street, Edinburgh, EH8 9EJ (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Nick Allan (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 28 February 2023, the Applicant was not in attendance but was represented by Ms Zoe Thomson and Ms Katy Devlin of Belvoir Edinburgh. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/3059.

In advance of the CMD the tribunal had received from Belvoir Lettings emails dated 16 and 18 January 2023 and 22 February 2023.

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 18 November 2021.
- ii. The rent payable in terms of the PRT was agreed to be £725 per calendar month payable in advance.
- iii. A deposit of £1,012.50 was also agreed to be paid.
- iv. On 22 August 2022, the Applicant served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 22 September 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £8,615.00.
- v. By email dated 23 September 2022 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. Pre-action protocol letters were sent to the Respondent by email on 15 and 26 July and on 2 and 10 August 2022.
- vii. The rent arrears due as at the date of the application were stated to be £8,710.34.

The CMD

At the CMD the Applicant's representatives made the following representations in respect of this application and the associated application FTS/HPC/CV/22/3059:-

- i. Prior to the PRT the Respondent occupied the Property under a different tenancy. He has therefore lived in the Property since 18 July 2013.
- ii. The current rent arrears outstanding and due by the Respondent are £12,135.00.
- iii. The last payment received from the Respondent was on 20 September 2022 in a sum of £830.
- iv. The Respondent is still in occupation of the Property. He lives there alone.
- v. The Respondent was previously understood to be a student. It is thought he may have a degree in physiotherapy or similar. It is not known if the Respondent is in employment.
- vi. Payments made are received from the Respondent personally.
- vii. The Property is not adapted.
- viii. Engagement from the Respondent is sporadic. Sometimes he replies to enquiries, other times he does not. He is difficult to contact and he responds by email. His responses are "cryptic" with various "excuses" for non-payment being made, for example that he has been ill, that his Mum has been ill and that he had to return to Poland. He was last in contact on 19 January 2023 saying that he did not know where he was moving to, that he had options and that he would pay the arrears in full prior to the CMD.
- ix. The Applicant seeks an eviction order.

Findings in Fact

- i. The Respondent has been in occupation of the Property since 18 July 2013.
- ii. Most recently, the Applicant leased the Property to the Respondent in terms of the PRT.
- iii. The rent payable in terms of the PRT was agreed to be £725 per calendar month payable in advance.
- iv. A deposit of £1,012.50 was also agreed to be paid.
- v. On 22 August 2022, the Applicant served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 22 September 2022

- on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £8,615.00.
- vi. By email dated 23 September 2022 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
 - vii. Pre-action protocol letters were sent to the Respondent by email on 15 and 26 July and on 2 and 10 August 2022.
 - viii. The rent arrears due as at the date of the application were stated to be £8,710.34.
 - ix. The current rent arrears outstanding and due by the Respondent are £12,135.00.
 - x. The last payment received from the Respondent was on 20 September 2022 in a sum of £830.
 - xi. The Respondent is still in occupation of the Property where he lives alone.
 - xii. That it reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and on his behalf orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order.

The Tribunal considered that the Applicant had complied with the pre-action protocols referred to in Schedule 3, Ground 12, paragraph 4(b) of the 2016 Act. The rent arrears are very substantial.

The tribunal therefore determined that it is reasonable to grant an eviction order under Ground 12 of Schedule 3 of the 2016 Act.

Decision

The Tribunal granted an eviction 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.

Gillian Buchanan

Legal Member/Chair

28 February 2023
Date

