



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/22/3571

Re: Property at 43b Etive Place, Stirling, FK95BA (“the Property”)

Parties:

Mr Finlay James White, Muirhead, Braco, Dunblane, FK15 9LJ (“the Applicant”)

Ms Channelle Brown, 43B Etive Place, Stirling, FK95BA, Mr Jamie Mccarrick, present whereabouts unknown (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the respondents

Introduction

1. These are linked applications between the same parties. The first application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. Service of the applications and intimation of the Case Management Discussions (CMDs) was effected by Sheriff Officers on the first respondent on 14 December 2022. Service by advertisement has been made in respect of the second respondent with a certificate being produced which confirms this.

3. The CMD hearing on both cases took place by teleconference on 1 February 2023 at 10.00 am. The applicant was represented by Ms Claire Mullen or Messrs TC Young Solicitors. There was no appearance by or on behalf of either respondent. No representations had been received from either of them.

Findings and Reasons

4. The property is 43b Etive Place, Stirling FK9 5BA.
5. The applicant is Mr Finlay James White who is the heritable proprietor and registered landlord. The respondents are Ms Chanelle Brown and Mr Jamie McCarrick who are the named tenants.
6. A private residential tenancy was entered into between the parties which commenced on 14 July 2021. The rent stipulated was £650 per month.
7. The respondents have fallen into significant arrears of rent throughout the subsistence of the short duration of the lease. They have paid no rent since 1 November 2021, well over a year ago. At the time that the applications were submitted to the Tribunal, rent arrears were £7,700. Throughout the time that the application has been pending the arrears have increased and the applicant made a timeous Rule 14A amendment application to increase the amount sought to be recovered. The arrears now outstanding in the sum of £10,300 are evidenced by an unchallenged credible and reliable detailed rent statement which the Tribunal attached significant weight to.
8. The applicant is entitled to recover arrears of rent due under and in terms of the written lease between the parties. The Tribunal therefore granted a payment order against the respondents in the sum of £10,300. There is no opposition by the respondents and no time to pay direction application has been made by the respondents.
9. The applicant also seeks interest from the date of decision until payment. This is fair and reasonable. 4% per annum is an appropriate rate of interest to be imposed by the Tribunal in the current commercial climate having regard to the cost of short term commercial borrowing.
10. The eviction proceedings are based upon the arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondents are in rent arrears over three consecutive months.
11. The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 21 February 2022. This states that an application will not be submitted to the Tribunal for an eviction before 24 August 2022. The Notice is compliant with the requirements set out in Section 62 of the Act. It is also noted that there is post office track and trace data which shows that the Notice to Leave was delivered on 22 February 2022. The required 6 month notice was given to the respondents.

12. The Tribunal was satisfied that more than three consecutive months of rent was outstanding at the time that the Notice to Leave was served and also remains unpaid by the respondents. This establishes ground 12.
13. Ground 12 was originally drafted as a mandatory ground for eviction. All eviction grounds are now discretionary. The Tribunal proceeded to consider the issue of reasonableness.
14. It is understood that the second respondent no longer lives in the property. He vacated a number of months ago. The applicant's representative has instructed tracing agents to identify his current whereabouts but such attempts have failed.
15. The only person residing in the property is the first respondent. She is known to be 25 years of age. She is believed to be in employment as a care home nurse. She has no known disabilities or vulnerabilities. She has no known dependents.
16. The applicant is adversely affected financially by the absence of rent being paid. The rent arrears are significant. It is unreasonable to require the applicant to continue to provide accommodation to either respondent in the absence of rent being paid.
17. The applicant is also concerned regarding the condition of the property. He has made a right of entry application to the Tribunal under reference FTS/HPC/RE/22/1048. An inspection was carried out by the Tribunal on 24 August 2022 when it was noted that there was a smashed window which had not been reported to the applicant. There was a refusal/lack of access. The applicant is unable to access the property to ensure compliance with his landlord obligations. The respondents failure to engage is unacceptable.
18. There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicant. In the event of an eviction order being granted the local authority has an obligation to make alternative accommodation available to the respondents.
19. The Tribunal found that The Rent Arrears Pre-Action Requirements have been adequately fulfilled by the applicant.
20. In all of the circumstances, the Tribunal determined it was reasonable to grant the eviction order sought by the applicant which is unopposed.

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.

Richard Mill

1 February 2023

Legal Member/Chair

Date