



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/22/3703

Re: Property at 20 A Crown Street, Aberdeen, AB11 6AY (“the Property”)

Parties:

Mr Stuart Tawse, 2 Mackie Place, Aberdeen, AB10 1PF (“the Applicant”)

Mr Moyu Chen, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order.

Introduction

This Case Management Discussion (CMD) relation to Civil Proceedings in connection with a Private Residential Tenancy under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference.

1. Attendance and Representation

John Jarvie, Bannatyne Kirkwood France & Co 16 Royal Exchange Square Glasgow, G1 3AG attended for the Applicant.

The Respondent was not present. He had been served by Sheriff Officer on the 14th December 2022. The Sheriff Office intimation of service raised the possibility that the Respondent may not be living in the property. On this basis the Tribunal also served on the Respondent by Advertisement.

2. Preliminary Matters.

The Applicant's representative said there had been no contact with the Respondent for a year and that all the emails and letters had all gone unanswered. The email address in tenancy agreement was used for intimation of the amendment and this went unanswered. The Applicant believed the Respondent may have left the property and returned to China but they had no evidence or contact from the Respondent to be sure.

There were no other preliminary matters raised.

3. Case Management Discussion

The Applicant's representative set out that the Applicant sought an Eviction Order in order that he can lawfully take possession of the property. The Order was also sought to end the financial prejudice on the Respondent as no payments had been received to the rent account since June 2022. The Applicant also sought to re-let the property and to re let it. It was not definite but considered that the Respondent had not lived in the property for a number of months as he had not been seen. The last payment to rent was made on the 6th June 2022. The Applicant sought an order on the basis of Ground 12, Schedule 3 of the 2016 Act. The arrears as at the rent statement lodged on 26th January 2023 were 8625 and the rent account had been in arrears of rent for a period of 3 years. There was no mortgage on the property but the Applicant relies upon the rent alongside one other property as sole income alongside another property. The Applicant has had to be relying on savings and seeks to have the property re-let.

The Applicant's representative explained that the Respondent had been living on his own in the property and as far as they know no one else was living there. The Respondent had been unable to pay rent and only intermittently paying rent after losing his job in the initial lockdown. He had moved to London for employment but had still been able only to pay intermittently.

4. Findings in Fact and Reasons for Decision.

1. This Application is dated 6th October 2022 and brought in terms of Rule 109 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served by Sheriff Officer and by advertisement and had not provided any written representations or appeared at the Hearing.
2. The Applicant sought an Order for Eviction on the grounds of rent arrears.

3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.
4. There was a PRT in place between parties dated 29th October 2018.
5. A Notice to Leave was sent to the Respondent on 8th August 2022. The Applicant has sent pre action requirement correspondence to the Respondent and a copy of same was lodged.
6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as rent under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
7. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to £8625. Monthly contractual rent is £750.
8. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
9. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
10. Further the Tribunal was satisfied that the rent arrears were of a substantial nature. No payment to rent had been received since June 2022.
11. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
12. The Tribunal noted the Local Authority had been notified.
13. On the evidence available to the Tribunal the Respondent had no dependents residing with him, vulnerabilities known and he may also be not residing there. The Applicant has endured 3 years of a rent account in arrears and no payment for a significant period. No vulnerabilities are noted. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
14. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.

K Kirk

9th February 2023

Legal Member/Chair

Date

