



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/23/0487

Re: Property at 433B George Street, Aberdeen, AB25 1ER (“the Property”)

Parties:

Mr Brahmanandan Roy, 1 Murcar Cottages, Bridge of Don, Aberdeen, AB23 8BD (“the Applicant”)

Mr Alan Murray, 433B George Street, Aberdeen, AB25 1ER (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This was a case management discussion in respect of an application by the Applicant dated 11th February 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged:-
 - A copy of the Tenancy Agreement dated 16th November 2019
 - Copy Notice to Leave dated 4th October 2022
 - Copy certificate of posting of the Notice to Leave dated 4th October 2022
 - Track and trace receipt
 - Rent statement dated 16th March 2023
 - Copy S 11 Notice and letter to Aberdeen City Council

The CMD

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant attended without representation.

4. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 22nd June 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
5. The Applicant advised that he was seeking an order for eviction of Mr Murray who was the tenant in the Property and an order for rent arrears in the conjoined action. He explained that the Respondent had lived in the Property since approximately November 2019 when the tenancy began. He explained that the first arrears accrued in May 2020 when there was an underpayment of rent for that month, and then there was no payment on 16th July 2022, rent for August 2022 was paid and then nothing thereafter. He advised that the tenant is not paying rent and is refusing to leave the Property and refusing access to the Property. He explained that he tried to get a gas safety inspection carried out but the tradesmen did not get access. The Applicant explained that he was now in substantial debt himself and now needed to sell the house. He also advised that he believed the Respondent has been offered a property by the council but he has not moved. When asked if he had sent any formal pre action letters Mr Roy confirmed he had not, but stated that when the Respondent had spoken to him about struggling with rent he had allowed some further time. He indicated he thought the Respondent may be an older gentleman but did not know much about his circumstances although due to lack of contact he had contacted the police about concern for his tenant around October last year and they had advised the Applicant the tenant was okay.
6. The Tribunal questioned the Applicant about the grounds he was seeking to apply under. The Applicant advised he was not a lawyer and was not sure, he would leave it to the Tribunal although he was anxious for a resolution and did not want any delays if possible. The Tribunal indicated that depending on the Ground of Eviction there is a current suspension of eviction actions.
7. Under further questions the Applicant advised that the Respondent lives alone in the tenancy but is not sure of his current circumstances and advised that a number he had for the Respondent's son is no longer working.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 16th November 2019.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 4th October 2023 was served on the Respondent by recorded delivery post confirming that no proceedings would be raised before 4th November 2022
4. These proceedings were raised on 11th February 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on Aberdeen City Council
6. There was rent outstanding for at least 3 consecutive months' at the date of service of the Notice to Leave.
7. The Rent due is £495 in terms of the lease

8. The rent outstanding as at 16th March 2023 was £4,205 and there has been no payments since.
9. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
10. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 11 and 12 of Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was sent by recorded delivery post on 4th October 2022 and signed for on 18th October 2022.
10. Grounds 11 and 12 require 28 days' notice under the current rules. The Notice sets out the notice period as expiring on 4th November 2022. This Application is therefore timeous.
11. The Applicant had applied referring to Ground 1A, Ground 11 and Ground 12 but the only written evidence provided to support a ground of eviction was for Ground 12 i.e. evidence to show rent had not been paid for nearly a year. During the course of the discussion the Applicant advised that he was now in debt and so his intention was to sell the Property as soon as he could although that had not been his intention when he served the Notice to Leave and he mentioned that the tenant had not let in tradesmen to carry out safety checks. Given that Ground 1A was not stated in the Notice to Leave and the Tribunal had no evidence to support that this ground was met, the Tribunal did not consider it appropriate to include this as a ground of Eviction, nor had they any evidence or detailed submissions as to the breach of contract for Ground 11. However the Tribunal did consider that Ground 12 was met namely that the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as one months' rent under the tenancy on the day the Tribunal considers the application and has been in arrears of rent for any amount for a continuous period up to and including that day, of three or more consecutive months. The Tribunal notes the Respondent had not paid rent since 16th August 2022. As at the date of service of the Notice to Leave rent had been outstanding for over 3 months, as an underpayment of rent had been made on 16th February 2020 and was never repaid. As of 4th October 2022 the sum of £1,235 was due. From the rent statement lodged with the application, £4,205 of rent was due up to 16th March 2023. The Applicant could not state the current rent arrears due but advised that nothing has been paid since and so the Tribunal notes that rent is due and owing for a further 4 months. From this evidence the Tribunal accepted that Ground 12 has been met.
12. The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Mr Roy to be sincere and credible in his response to questions and accepted that the rent now outstanding was substantial as no rent had been paid since 16th August 2022, that Mr Roy was a landlord of only this property and that non-payment of rent was now causing him substantial hardship. Given the Respondent has made no effort to pay the arrears, and

has not allowed any access to the landlord to carry out maintenance checks the Tribunal does find it reasonable to grant the order for eviction. There was no evidence to show that the failure to pay is a consequence of any delay or failure in the payment of benefit and the Respondent appears to have been offered an alternative house by the Council but has not taken it or vacated this Property.

13. There being no response from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application under this ground.

Decision

Order for possession granted under Ground 12 of Schedule 3 of the 2016 Act. Noted that the order is not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022

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.

Jan Todd

Legal Member/Chair

Date: 31st July 2023