



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/23/0989

Re: Property at 2F3, 22 Leith Walk, Edinburgh, EH6 5AA (“the Property”)

Parties:

Mr Mark Stubbs, 99 Tuddenham Avenue, Ipswich, Suffolk, IP4 2HG (“the Applicant”)

Ms Trinity Patel, 2F3, 22 Leith Walk, Edinburgh, EH6 5AA (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 18 September 2023, the Applicant was not present but was represented by Mr Scott Stevenson of Clarity Simplicity Limited. The Respondent was neither present nor represented.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/23/0990.

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.

Prior to the CMD the Tribunal had received the following from the Applicant’s representative:-

- i. Email dated 5 September 2023 with attachments; and
- ii. Email dated 8 September 2023 with attachments.

Prior to the CMD the Tribunal had received from the Respondent’s representative, her father Mr Pankaj Patel, the following:-

- i. Email dated 7 September 2023;
- ii. Email dated 9 September 2023 with attachment; and
- iii. Email dated 14 September 2023 with attachment.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-

Background

The tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent with effect from 5 March 2022.
- ii. The lease between the parties is headed “Lodger Agreement”.
- iii. The rent payable in terms of the Lodger Agreement was agreed to be £550 per calendar month payable in advance on the 7th day of each month.
- iv. On 12 December 2022 the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 8 March 2023 on the basis that the Applicant intends to sell the Property.
- v. By emails dated 24 March 2023 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The application for an eviction order is dated 24 March 2023.

The CMD

At the CMD the Applicant’s representative, Mr Stevenson, made the following representations in respect of this application and the associated application FTS/HPC/CV/23/0990:-

- i. At the time the Lodger Agreement was entered into the Applicant was not aware of the legislation in Scotland relative to residential tenancies, or the form of tenancy agreement that should be used. The Applicant lives in England and failed to understand the correct process.
- ii. The Property was purchased by the Applicant to live in for work purposes and with a view to renting out rooms. The Applicant has never lived there whilst anyone else lived there.
- iii. The Lodger Agreement with the Respondent is in fact a Private Residential Tenancy.
- iv. The Applicant only entered into the Lodger Agreement with the Respondent. He became aware that the Respondent’s friend was also living in the Property. He did not consent to the friend being there. The friend left some time ago.
- v. Only the Respondent lives in the Property.
- vi. Whilst the Lodger Agreement refers to a deposit being paid by the Respondent no deposit was taken.
- vii. The Applicant intends to sell the Property. The cost of maintaining the Property is too great given rent is not being paid. The Applicant does not need the Property now for work purposes. The Applicant has no tie with Scotland and has no other properties there. There is no point in the Property being retained.
- viii. The rent arrears now due are £7,700 including the rent due for September 2023.
- ix. The Property has never been a House in Multiple Occupation.
- x. The Applicant was unaware of the need to be registered as a landlord when the Lodger Agreement was entered into. He rectified that as soon as he consulted Mr Stevenson’s firm and was appropriately advised.
- xi. The Applicant tried to have regular contact with the Respondent but was ignored. There has been no offer of payment.
- xii. The Applicant seeks an eviction order.

Mr Stevenson did not pursue any amendment to the application notwithstanding the terms of his firm’s emails of 5 and 8 September 2023.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant leased the Property to the Respondent with effect from 5 March 2022.
- ii. The lease between the parties is headed "Lodger Agreement" but is, in law, a Private Residential Tenancy Agreement under the Private Housing (Tenancies)(Scotland) Act 2016.
- iii. The rent payable in terms of the Lodger Agreement was agreed to be £550 per calendar month payable in advance on the 7th day of each month.
- iv. On 12 December 2022 the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 8 March 2023 on the basis that the Applicant intends to sell the Property.
- v. By emails dated 24 March 2023 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The Respondent remains in occupation of the Property.
- vii. The Applicant intends to sell the Property for market value or at least put it up for sale within 3 months of the Tenant ceasing to occupy it.
- viii. It is reasonable to grant an eviction order.

Reasons for Decision

The Respondent did not attend and was not represented at the CMD. The factual background narrated by the Applicant within the application papers (including the Affidavit of the Applicant dated 2 June 2023) and on his behalf orally at the CMD was therefore accepted by the Tribunal.

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

The tribunal determined that it is reasonable to grant an eviction order under Ground 1 of Schedule 3 of the 2016 Act.

Decision

The Tribunal grants 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.



Legal Member/Chair

18 September 2023
Date