



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/21/1240

Re: Property at 33 Corrie Crescent, Saltcoats, KA21 6JL (“the Property”)

Parties:

Mr Paul John Francis, 5 Carnbrook Road, London, SE3 8AA (“the Applicant”)

Mr Martin James McKillop, (“the First Respondent”) & Ms Katleen Laperie (“the Second Respondent”), 33 Corrie Crescent, Saltcoats, KA21 6JL; 29 Davaar Road, Saltcoats, KA21 6HB (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the First Respondent)

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

- Background

This is an application for an eviction order against the Respondents, who have a private residential tenancy agreement with the Applicant concerning the Property. It called for a hearing at 10am on 24 February 2022, by teleconference. The Applicant was represented on the call by Mrs Petrescu, of Barnetts, solicitors. The Second Respondent was represented by Mr Alister Meek of CHAP. The First Respondent was not on the call in person and was not represented. The commencement of the CMD was delayed by 10 minutes to allow for any technical difficulty he may have been experiencing, but he did not make contact.

The Tribunal noted that he had not attended at previous callings of the case and had not responded to the directions issued in it thus far. It concluded that he did not intend to take part in proceedings and considered that it was fair to proceed in his absence.

- Findings in Fact

1. The First Respondent occupies the Property in terms of a private residential tenancy, with a start date of 1 July 2018.
2. The Second Respondent does not occupy the Property any longer: but is a joint tenant with the First Respondent in terms of the private residential tenancy.
3. Rent of £600 is due on the first of each month, in terms of the tenancy agreement.
4. On 14 July 2020, the Applicant served a notice to leave on the Respondents indicating that he intended to seek eviction on the ground that they were in rent arrears over three consecutive months.
5. A date of 23 January 2021 was erroneously given on the notice to leave as the earliest date proceedings could be raised.
6. This application was raised on 24 May 2021.
7. The error in the date entered on the notice to leave did not materially affect its effect.
8. On 1 January 2020, the Respondents fell into arrears in regard to the rent.
9. On 14 July 2020 (the date of service of the notice), the Respondents had been in rent arrears for 6 consecutive months.

10. The arrears of rent have not been cleared at any point prior to the date of the hearing.

11. The Respondents have consequently been in arrears for 25 consecutive months.

12. The Applicant has attempted to work with the Respondents to address the arrears, but they have not engaged.

13. In particular, the possibility of an award in terms of the Tenant Grant Fund administered by North Ayrshire Council has been explored and established to be unable to address the arrears.

14. The arrears are not as a result of a failure or delay in payment of a relevant benefit.

15. It is reasonable to grant an eviction order against the Respondents.

- Reasons for Decision

16. Given that this application proceeds on the basis of a notice which does not contain the date required by s.62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'), the Tribunal was addressed on the applicability of s.73 of the Act to that error and whether it could thereby entertain the application. It is not immediately clear that s.73 may be applied to a notice with such a deficiency, given that s.73(2)(d) extends the ability to overlook minor errors only to notices to leave, "as defined by s.62(1)." A notice without the date required by s.62(1)(b) does not meet that latter definition.

17. Nonetheless, the Tribunal took into consideration the case of *Smith v. MacDonald and Munro* (UTS/AP/20/0029), in which the Upper Tribunal considered whether s.73 should be applied to an error of a similar type. In that

case, the consideration was *obiter* and the full reasoning as to how the Upper Tribunal came to the conclusion that s.73 might be applicable in such circumstances was not set out. The Applicant argued that s.73 should be read purposively, to mean that it applies to notices to leave that meet the definition in s.62(1), once its own terms have operated. It may be that that was the basis upon which the Upper Tribunal concluded it could consider the use of s.73 in *Smith*. The Tribunal in any case considered that *Smith* lent persuasive weight to the argument and determined that it could consider whether s.73 was applicable in this case to read the notice as if it had the correct date inserted on it.

18. The Tribunal considered that it was applicable in that way. The error in the notice had the effect of extending the period of notice before the Applicant could raise proceedings, which did not materially affect its effect. The effect of the notice is to make the Respondents aware that they must address the issues contained in it by a certain date, after which formal proceedings may be instituted. An extension to that period of approximately one week, as in this case, does not materially impact on that function.

19. Having made that decision, on the basis of the findings in fact above, the Tribunal found that Ground 12 of Schedule 3 to the Act is established, as regards the Respondents. There was no information advanced by the Respondents to suggest that an order was not reasonable in the circumstances. An order for their eviction was therefore made.

- Decision

Order for eviction granted.

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.

Nairn Young

24 February 2022

Legal Member/Chair

Date