



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/21/1331

Re: Property at 48 Cattofield Square, Aberdeen, AB25 3QB (“the Property”)

Parties:

Ms Jane Richardson, c/o Easthaven Property Management, 44 Albert Street, Aberdeen, AB25 1XS (“the Applicant”)

Ms Joyce Bepete, 48 Cattofield Square, Aberdeen, AB25 3QB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent.

Background

1. The Applicants submitted an application for repossession of the Property from the respondent dated 2nd June 2021.
2. In support of their application they lodged the following documents:-
 - a. A copy of the lease dated 21st December 2018
 - b. A copy of the Notice to Leave dated 26th November 2020
 - c. Copy rent statement showing arrears of rent due at June 2021
 - d. A copy of an e-mail confirming service of the Notice to Leave on the Respondent dated 26th November 2021
 - e. S11 notice addressed to Aberdeen City Council with an e-mail to Aberdeen City Council dated 2021
3. Prior to the CMD by e-mail dated 8th July 2021 the Applicant lodged a request to amend the amount of rent arrears sought in the conjoined civil

action by confirming that the arrears of rent had increased to £12,000 as there had been no payment made in July 2021 .

4. A Case Management Discussion (CMD) was held by teleconference in view of the current Covid 19 pandemic, at 10am on 26th July 2021.
5. The Applicant's representative Mr Aaron Doran of Raeburn Christie Clark and Wallace Solicitors attended the CMD, on behalf of the Applicant. The Applicant was not present.
6. . The Respondent did not attend, nor did anyone appear on her behalf. There had been no reason intimated in advance for her non-appearance nor any request made for a postponement of the CMD. The Tribunal noted that valid intimation of the CMD had been made to the Respondent having seen a certificate of execution of service by Sheriff Officers on the Respondent dated 24th June 2020. The Tribunal delayed the start of the CMD by 10minutes to see if the Respondent was late in joining but she did not join. Accordingly the Tribunal proceeded to hold the CMD in the absence of the Respondent.

The Case Management Discussion

7. The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the tribunal can make any decision at a CMD that it can make after a full hearing.
8. There were no written representations received from the Respondent.
9. Mr Doran confirmed that there have been no further payments of rent since he raised the application and confirmed the Respondent is still resident in the Property. He advised in response to questions that the Applicant had left the Property during 2020 when she appeared to have gone to be with her partner in Dunoon and to work on a business there but Mr Doran confirmed that when he raised on behalf of the applicant a notice to leave based on the Respondent not living in the Property she returned to the Property and confirmed she was living there. The letting agent met the tenant there and could confirm she was currently living there. Mr Doran explained that he then served on behalf of the Applicant a new Notice to Leave on the basis of ground 12 and he fact there were over 3 months' rent arrears due and owing. He advised that he had several conversations with the Respondent around November 2020. That she advised she had been working as a front line worker in Aberdeen infirmary but due to the pandemic and wanting to help her partner she had moved temporarily to Argyle and Bute. She did however regard the flat as her home.
10. Mr Doran confirmed the rent arrears are substantial and causing a lot of stress to the Applicants as there have been no payments since February 2020. He confirmed the letting agent sends out monthly updates to the tenant and has received no communication from the tenant since last year. He has lodged a copy of the pre-action requirements letter sent out on 26th November 2020 with the Notice to Leave and confirmed this contained a lot of advice and useful contacts for the Respondent. He followed this up with an e-mail in May 2021 further advising the Respondent should seek legal advice and confirmed there has been no communication from the Respondent since last November. He also advised that on her return to the

Property in November 2020 after a period away she assured Mr Doran that she would deal with the arrears but had advised that due to the lockdown the hotel business had had to close. Mr Doran advised initially that he thought she may have returned to work in the hospital but now believes she may have remained working with the hotel business from speaking to the letting agent.

11. Mr Doran advised that he was contacted by someone from Money Advice from Aberdeen City Council initially in June 2021 who advised him they had been appointed by the Respondent. The person checked with Mr Doran in on 21st July 2021 the date and purpose of the CMD which Mr Doran confirmed but there have been no proposals or further contact since then.
12. Mr Doran submitted that in light of the level of arrears, that the legal requirements had been complied with to seek an order for possession and that there had been no communication or response from the Respondent to this application he confirmed that he was seeking an order for repossession today and submitted that it was reasonable for the Tribunal to grant such an order.

Findings in Fact

13. The parties entered into a lease of the Property which commenced on 21st December 2018.
14. The Rent due in terms of the lease is £750 per calendar month payable in advance
15. The tenant is still living in the Property
16. The Applicant produced a statement of rent showing that since March 2020 rent has been continually in arrears.
17. A notice to leave based on Ground 12 rent arrears was served on 26th November 2020 giving 6 months' notice.
18. There were over 3 months' rent outstanding at the date of service of the Notice to Leave.
19. As at the date of the Application there was £11250 of rent outstanding.
20. Today the rent outstanding is £12,000 which is over 3 months' rent.
21. The arrears of rent are not wholly or partly due to a delay or failure in payment of a relevant benefit.
22. A notice to leave was served on the Respondent on 26th November 2020 by e-mail confirming that no proceedings would be raised before 29th May 2021
23. These proceedings were raised on 2nd June 2021 and the application included a copy of the Notice to Leave.

• Reasons for Decision

24. 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 12 of Schedule 3 of the Act as the relevant ground of eviction.

25. The Notice to Leave was also accompanied by evidence of how the ground was met namely the rent statement showing arrears due from March 2020 and sum outstanding then of £6000.
26. The Notice also set out the relevant notice period which expired on 29th May 2021
27. The Application was lodged on 2nd June 2021 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefor complies with Section 55 of the Act.
28. The Tribunal accepted the verbal averments and written statement of rent arrears from the Applicant's representative who was credible in his evidence of the Respondent having failed to pay the rent from March 2020. The Rent statements lodged and the verbal submissions confirmed that the rent outstanding as at today's date amounts to £12000, and that arrears have been due and owing for more than 3 months.
29. The Tribunal notes that the Respondent left or changed her employment for at least part of that time due to the pandemic and this may have impacted on her income. The Respondent however has not lodged any written submissions nor has she attended the CMD today or sent a representative. The Respondent has been in touch with Aberdeen City Council and has apparently sought advice but there neither the Applicant nor her agents have received any proposals of payment or been advised if the Respondent has applied for any hardship loans or assistance. The Applicants have ongoing bills to pay with regard to the Property, they have been without any rental income since March 2020 and the arrears are substantial. The Applicants are finding this stressful.
30. The Tribunal is satisfied that the Applicant has complied with the terms of the Rent Arrears Pre Action Requirements (coronavirus) (Scotland) Regulations 2020.
31. There being no response from the Respondent for the Tribunal to consider, the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 12, is met, and in all the circumstances finds that it is reasonable to grant the order for eviction.

- **Decision**

The Tribunal grants the order for possession against the Respondent.

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.

J. T

Legal Member/Chair

26th July 2021

Date