



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/21/2900

Re: Property at FLAT 1, 22 CATHERINE STREET, DUMFRIES, DG1 1JF (“the Property”)

Parties:

Mr Miles Wenner, Mrs Britt-Marie Wenner, 2 Moffat Road, Dumfries, DG1 1NJ (“the Applicants”)

Ms Camila Aguiar Penha, FLAT 1, 22 CATHERINE STREET, DUMFRIES, DG1 1JF (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application dated 19th November 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 4 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant’s representative included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 1st September 2019, copy Notice to Leave dated and served on 12th July 2021, together with evidence of service, copy section 11 notice together with evidence of service, and affidavits of the Applicants.
2. Notification of the application and a Case Management Discussion set down for 27th January 2022 was served upon the Respondents by Sheriff Officers on 23rd December 2021.

Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 27th January 2022. The Applicants were not in attendance and were represented by Ms Nicola Caldwell, Solicitor. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. Ms Caldwell moved the Tribunal to grant the order sought, stating that Ground 4 was met as set out in the affidavits. The Applicants intend to live in the Property as their only or principal home for at least three months.
6. Addressing the Tribunal on reasonableness, Ms Caldwell said the Respondent is in arrears of rent in the sum of £6720. Attempts to contact her have been unsuccessful. The Applicants have contacted the local authority seeking assistance for the Respondent in respect of her rent arrears, but she has not responded to attempts at contact. The homelessness team have also attempted contact without success.
7. Responding to questions from the Tribunal regarding the Respondent’s circumstances, Ms Caldwell said she understood the Respondent lives alone. She was unaware of the employment history or whether there was a particular reason that rent arrears arose. The relationship between the parties has broken down and there has been some conflict in the past.
8. The Tribunal allowed Ms Caldwell to leave the telephone conference to contact the Applicants to ascertain whether any further information on the Respondent’s circumstances was available. Ms Caldwell re-joined the telephone conference and said she had been unable to contact the Applicants, however, she had ascertained from the case file that the Respondent lives alone. The Applicants had last attempted to contact the Respondent in December 2021 without success.

Findings in Fact and Law

9.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st September 2019.
 - (ii) The Applicants intend to live in the Property as their only or principal home for at least three months.
 - (iii) Notice to Leave has been served upon the Respondent.

- (iv) It is reasonable to grant an eviction order.

Reasons for Decision

10. Ground 4 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months. The Tribunal is satisfied on the information before it that Ground 4 has been established.
11. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
12. The Tribunal took into account the evidence in the affidavits of the Applicants pertaining to their personal circumstances and the rent arrears. It also took into account the representations made by Ms Caldwell, and considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicants.
13. Unfortunately, the Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
14. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

15. An eviction order in respect of the Property is granted 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.

Helen Forbes

Legal Member/Chair

27th January 2022
Date