



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/2075

Re: Property at 7 Swallowtail Court, Dundee, DD4 0LX (“the Property”)

Parties:

Mr George Kwek, Heatherbank, Auchmuir Bridge, By Leslie, Fife, KY6 3JD (“the Applicant”)

Mr Ian McDonald, 7 Swallowtail Court, Dundee, DD4 0LX (“the Respondent”)

Tribunal Members:

Alastair Houston (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 that an order in terms of paragraph 12 of schedule 3 of the 2016 Act be granted.

1. Background

- 1.1 This is an application relating to a private residential tenancy agreement between the parties for an eviction order under paragraph 12 of schedule 3 of the 2016 Act. The Applicant alleged that a significant sum of rent due had gone unpaid.
- 1.2 The application was accompanied by copies of the written tenancy agreement, a notice to leave served on the Respondent on 14 December 2021, pre-action letters sent to the Respondent and a rent statement.
- 1.3 The application was conjoined with application reference FTS/HPC/CV/22/2074 and the decisions should be read in conjunction with each other.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 14 November 2022 by teleconference. The Applicant was represented by Mr Buchan of Thorntons solicitors. The Respondent was neither present nor represented.
- 2.2 Mr Buchan confirmed that the application was insisted upon and that the Tribunal ought to proceed in the absence of the Respondent. The Tribunal noted that service of the conjoined applications and notice of the Case Management Discussion had been given to the Respondent by Sheriff Officer on 7 October 2022. Accordingly, the Tribunal considered it appropriate to proceed in the Respondent's absence as permitted by Rule 29 of the Chamber Rules.
- 2.3 Mr Buchan firstly addressed the discrepancy in the rent statement. Due to a clerical error, £415.00 had required to be credited to the rent account on 4 August 2022. The sum specified in the notice to leave as being outstanding and that in the application at the time it was lodged was therefore overstated to the extent of £415.00. Mr Buchan submitted that this was of no effect as to the validity of the notice nor the Tribunal's ability to issue an eviction order.
- 2.4 Mr Buchan advised that, to his knowledge, the Respondent lived at the property alone. There had been no engagement by the Respondent as a result of the letters and notice to leave sent to him. The pre-action requirements had been completed by the Applicant by virtue of the letters sent. He did not believe the Respondent to be reliant on welfare benefits but had no information on his financial position. As far as he was aware the Respondent continued to occupy the property. The arrears were substantial and were currently £8285.00 as of 11 November 2022. In the circumstances, it was reasonable to grant the order sought.

3. Reasons For Decision

- 3.1 The Tribunal considered the application and accompanying documentation, together with the submissions made by the Applicant's representative. Given the material before it, the Tribunal considered it could determine the application without the need for a hearing, as permitted by Rule 19 of the Chamber Rules.
- 3.2 The Tribunal noted that a valid notice to leave, giving the appropriate period of notice to the Respondent, had been served. The error as to the precise amount of arrears at the time of service was a minor error that could be excused by virtue of s.73 of the 2016 Act. As at the date of service of the notice, the arrears, accounting for the clerical error, were significant and sufficient to constitute the ground for an order in terms of paragraph 12 of the schedule 3 of the 2016 Act.

- 3.3 The Tribunal was mindful that it now required consideration as to whether it was reasonable to issue an eviction order on the basis of paragraph 12 of schedule 3 of the 2016 Act. The live issue in the present application was therefore restricted to one of reasonableness.
- 3.4 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 3.5 The Tribunal considered that the arrears were significant considering the monthly rent due by the Respondent was £395.00. There were no dependent children residing at the property. The Tribunal considered the letters sent by the Applicant to constitute compliance with the pre-action requirements. In the absence of any representations by the Respondent as to why such a significant sum of rent had gone unpaid, the Tribunal determined that it was reasonable to grant an eviction order.

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.

A Houston

/

Legal Member/Chair

14 November 2022
Date