



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/22/1982

Re: 24 Kinnordy Terrace, Dundee DD4 7NW (“the Property”)

Parties:

Mrs Wendy Stewart, residing at 3 Ruthven Road, Dundee DD4 7SA (“the Applicant”)

Mr Calvin Lamb, residing at 24 Kinnordy Terrace Dundee DD4 7NW (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden(Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 16 June 2022 the Applicant’s representatives Michael A Brown, Solicitors and Estate Agents, Dundee applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant’s representatives submitted a copy of the tenancy agreement, a copy of a Notice to Leave with Sheriff Officer’s Execution of Service, a Section 11 Notice and a letter confirming instructions to sell the property on gaining vacant possession in support of the application.
2. By Notice of Acceptance dated 8 July 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 3 August 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 20 September 2022. The Applicant did not attend but was represented by Mr Michael Brown, Solicitor, Dundee. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD having been given to the Respondent determined to proceed in his absence.
5. By way of preliminary matters, the Tribunal first noted that the Notice to Leave had been addressed to "Calvin Lamb" rather than "Kalvin Lamb" as the Respondent was designed in the tenancy agreement. Mr Brown submitted that this had been a typing error but that it did not affect the validity of the document given that it had been served on the Respondent by Sheriff Officers at the Respondent's address.
6. The Tribunal also noted that although the tenancy was said to have commenced on 1 November 2021 it appeared that the Respondent had been entitled to occupy the property with effect from 9 October 2021 therefore when the Notice to Leave was served on the Respondent by Sheriff Officers on 26 April 2022, he had been in occupation of the property for six months and 18 days. The Tribunal queried whether that being the case the Respondent ought to have had 84 days' notice in the Notice to Leave rather than 28 days' notice. After some discussion Mr Brown accepted that this may be the case but sought to rely on the Tribunal's discretion in terms of Section 52(4) of the 2016 Act to entertain the application as it was reasonable to do so for the reasons he went on to explain.
7. Mr Brown explained that following the commencement of the tenancy the Respondent had been in receipt of benefits and some but not all the rent had been paid through Housing Benefit. The Respondent had failed to pay the balance. He explained that the Applicant was in poor health. He went on to say that because of the rent not being paid and because of the Applicant's failing health she had decided to sell the property and instructed the Notice to Leave to be served on the Respondent. Following service of the Notice to Leave Mr Brown said that the Respondent stopped paying rent altogether and no rent had been paid to the Applicant since June. He said that an upstairs neighbour had complained about an infestation of mice in his property that he believed was coming from the Respondent's property. He said that he had encouraged the Applicant's husband to go to the property and speak to the Respondent about the problems and suggest that he agree to move out but the Respondent told him he would not move out without an order from the Tribunal. He went on to say that when the Applicant's husband returned to the property on 3 August 2022 to attempt to inspect the property, he was refused entry.
8. In response to a query from the Tribunal Mr Brown described the Respondent as not being an older person and that he was not aware of there being any

children in the property which was a one-bedroom flat. He went on to say that his client only had the one let property and that she had had enough of being a landlord and wished to realise her asset given her health problems as she could no longer manage the property herself.

9. Mr Brown submitted that given that the Respondent was not paying any rent for the property it would not be reasonable to have to serve a further Notice to Leave on the Respondent and make a fresh application and asked the Tribunal to grant the order for eviction.

Findings in Fact and Law

10. The parties entered into a Private Residential Tenancy that commenced on 1 November 2021 at a rent of £500.00 per calendar month.
11. Notwithstanding the commencement date of the tenancy the Respondent was entitled to occupy the property with effect from 9 October 2021.
12. The Respondent was served with a Notice to Leave by Sheriff Officers on 26 April 2022 giving the Respondent 28 days' notice before an application for his eviction could be made to the Tribunal.
13. In terms of Section 54(2)(b)(ii) of the 2016 Act the Notice ought to have given the Respondent 84 days' notice.
14. The Respondent has failed to pay the full rent for the property throughout the duration of the tenancy and has paid no rent at all since June 2022.
15. The Applicant has received complaints from a neighbour regarding an infestation of mice said to be emanating from the Respondent's property.
16. The Respondent has failed to co-operate with the Applicant's husband in trying to investigate the neighbour's complaint.
17. The Applicant is in poor health and can no longer manage the property.
18. The Applicant intends to sell the property once she obtains vacant possession.
19. The Local Authority have been served with a Section 11 Notice.

Reasons for Decision

20. The Tribunal was satisfied that the minor spelling error in the Notice to Leave would not invalidate it and in any event Section 73 of the 2016 Act would apply. The Tribunal was however concerned that although it did not know exactly when the Respondent took occupation of the property there was a strong possibility that he ought to have been given 84 days' notice in the Notice to Leave rather than 28 days' notice. The Tribunal did however take account of all

the facts that were put before it by Mr Brown including that no rent has been paid for several months and the failure of the Respondent to co-operate in allowing an inspection of the property. It also took account of the fact that despite being given an opportunity to submit written representations or attend at the CMD the Respondent chose to do neither. Therefore, with some hesitation the Tribunal determined to exercise its discretion in terms of Section 52(4) of the 2016 Act and entertained the application despite the breach of Section 54(2)(b)(ii).

21. Having allowed the application to proceed the Tribunal then considered whether in light of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 it would be reasonable to grant the order sought. In reaching its decision the Tribunal again took account of the fact that the Respondent chose not to participate in the proceedings and apparently advised the Applicant's husband that he would not move out of the property until an order for his eviction had been granted. The Respondent is it would seem a single man with no children living in the property. The Applicant is in poor health and no longer able to manage the property and wishes to sell it once she obtains vacant possession. She is not receiving any rent. She has concerns about the state of the property following issues being raised by a neighbouring proprietor but has been unable to gain access to the property for an inspection. Taking everything into account the Tribunal is satisfied that it is reasonable in all the circumstances to grant an order for the eviction of the Respondent from the property.

Decision

22. The Tribunal, having carefully considered the written representations and documents before it together with the oral submissions and being satisfied that it had sufficient information to allow it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the 2016 Act.

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.

Graham Harding
Legal Member/Chair

20 September 2022
Date

G. Harding