



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 52 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/1823

Re: Property at 5, Flat 18 Simpson Loan, Edinburgh, EH3 9GX (“the Property”)

Parties:

Mr Bernt Lie, Mr Hong Lie, Olav T 18, 3125, TBG, Norway (“the Applicants”)

Mr Aaron Cummings, 5, Flat 18 Simpson Loan, Edinburgh, EH3 9GX (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an order for eviction of the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicants. It called for case management discussion (‘CMD’) at 2pm on 30 October 2020 by teleconference. The Applicants were represented by Mr Riddell of Uomega Lettings Ltd.. The Respondent did not call in to the conference and was not represented. The start of the CMD was delayed by ten minutes to allow for any technical difficulty, but no contact was made by the Respondent.

- Findings in Fact

1. The Respondent lets the Property from the Applicants in terms of a private residential tenancy with a start date of 28 August 2019.
2. In terms of that tenancy, rent of £2,100 is due on the 28th of each month.

3. No rent has been paid by the Respondent since missing the payment due on 28 October 2019 and he has accordingly been in arrears since then.
4. The Applicants attempted to serve a notice to leave on the Respondent in February 2020 on the basis of the rent arrears. That notice was defective and an application to the Tribunal for an eviction order based on it was rejected in June 2020 on the Tribunal's own initiative. The Respondent had made no representations in relation to it.
5. The Applicants sent a notice to leave to the Respondent on 5 June 2020 stating that an eviction order would be sought on the ground that, "You are in rent arrears over three consecutive months." It used the template set out in Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It stated that the earliest date that proceedings could be started was 8 December 2020.
6. This application was made on 28 August 2020.
7. At the time of the CMD the arrears outstanding are £25,633.29.
8. The Applicants have attempted to contact the Respondent via their agents by telephone and email on various occasions since October 2019. The phone number given to them by the Respondent does not work. The Respondent has answered some emails sent to him, but ignored others.
9. The Applicants' agents met the Respondent in or around June or July of 2020. He indicated that he was not in a position to pay any rent.
10. The Respondent has not made any representations in relation to this application. The rent arrears are not due in part or whole to a delay or failure in payment of a relevant benefit.
- Reasons for Decision
11. There are two issues that require to be determined in relation to this application: whether it should be entertained by the Tribunal, despite having been made during the relevant notice period; and whether it should then be granted.
12. Following submissions on the question from the Applicants' representative, the Tribunal was satisfied that it is reasonable to entertain the application, in terms of s.52(4) of the Private Housing (Tenancies) (Scotland) Act 2016. The level of arrears is significant and the Respondent has made no proposal as to how they might be addressed. He has failed to engage consistently with the Applicants and has not engaged with the Tribunal process in regard to the previous, abortive application for an order for eviction, or this one. While there is (at least in theory) prejudice to the Respondent in losing approximately four months to pay off the arrears, he has previously indicated that he will not be able to make any payment and it therefore does not seem realistic to expect

that he would be able to do so, even with that extra time. That prejudice is in any case mitigated by the fact that he has been given ample notice of the Applicants' intention to recover the Property informally, through the attempts the Applicants' agents have made to contact him and the service of the previous application. On the other hand, the Applicants would suffer the prejudice of losing their income from the property for at least a further four months.

13. Having agreed to entertain the application, the Tribunal considered that it should be granted, on the basis that Ground 12 of Schedule 3 to the Act applies. The Respondent has been in arrears for considerably longer than three consecutive months. It is reasonable for an eviction order to be granted. The level of arrears is significant and the Respondent has not offered any explanation why eviction would not be reasonable in the circumstances. He has not made any proposal regarding payment and it would not be fair to put the Applicants in a position where they are unable to derive any income from the Property due to his occupation of it, in such circumstances. There is no suggestion that the failure to pay rent is wholly or partially as a result of a failure or delay in payment of a relevant benefit.

- Decision

Order 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

30 October 2020

Legal Member/Chair

Date