



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 (Act)

Chamber Ref: FTS/HPC/EV/21/0505

Re: Property at 2/5 Pleydell Place, Edinburgh, EH16 6DA (“the Property”)

Parties:

Mr Andrew Grant, 50 Carnethie Street, Rosewell, Edinburgh, EH24 9AR (“the Applicant”)

Mr Huang Lin, Mrs Zhing Ling, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession under Ground 10 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 5 March 2021;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 November 2020;
3. Photographic evidence showing Property unoccupied;
4. Notice to Leave dated 26 January 2021;
5. Section 11 Notice to Local Authority;
6. Email confirmation from TC Young Solicitors of service of Notice to Leave on the Respondent dated 26 January 2021;

7. Royal Mail Track and Trace confirming collection of section 11 Notice on 22 March 2021 by Local Authority;
8. Application for Service by Advertisement with Sheriff Officer Contact Trace Report dated 8 April 2021;
9. Certificate of Service by Advertisement of Tribunal CMD Notification on the Respondent dated 4 June 2021.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 4 June 2021. The Applicant participated and represented himself. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. The Respondent did not.

The Tribunal noted the Certificate of Service by Advertisement by the Tribunal Administration of the CMD Notification on the Respondent. The Tribunal were satisfied that the Respondent had received notification of the CMD and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent to attend and the Tribunal could determine the matter in absence if the Respondent did not.

The Applicant asked the Tribunal to grant the order for eviction and recovery of possession in absence of the Respondent. He referred to the photographic evidence produced which showed that the Property was unoccupied and also informed the Tribunal that he had no contact from the Respondent since December 2020. He also informed the Tribunal that on 6 December 2020 he had received a phone call from the police to say that they had raided the Property as the Respondent had set up a cannabis farm within it. Once allowed access to the Property by the police he had noted extensive damage and missing furniture.

The Tribunal considered the terms of Ground 10:

Not occupying let property

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts

The Tribunal considered the documentary evidence before it and the oral evidence of the Applicant. In so far as material the Tribunal made the following findings in fact:

Findings in Fact

1. The Parties entered into the Private Residential Tenancy Agreement (**PRTA**) commencing 1 November 2020;
2. The Respondent ceased to occupy the Property in December 2020 and has not occupied it since;
3. Notice to Leave dated 26 January 2021 was served on the Respondent by email as confirmed by TC Young Solicitors;
4. Section 11 Notification was served on the local authority by Royal Mail on 22 March 2021;
5. The Applicant has attempted to trace the Respondent but has been unsuccessful as evidenced by Sheriff Officer Trace Report dated 7 April 2021;
6. The Respondent ceased to occupy the Property as their only or principal home in December 2020 and prior to service of the Notice to Leave;
7. The Property not being so occupied is not attributable to a breach of the Applicant's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006;
8. It is reasonable to grant the eviction order sought on account of these facts.

Decision

Having made the foregoing findings in fact the Tribunal considered that it had sufficient information upon which to make a Decision at this stage and the procedure had been fair.

The Tribunal was satisfied that Ground 10 had been established and that on account of the established facts it was reasonable to grant the order sought.

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.

Alan Strain

4 June 2021

Legal Member/Chair

Date