



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/4215

Re: Property at North Lodge, Elie, KY9 1JT (“the Property”)

Parties:

Elie Estate Trust, Elie Estate, Elie, KY9 1ER (“the Applicant”)

Mr Andrew Duncan, North Lodge, Elie, KY9 1JT (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. A case management discussion (“CMD”) took place on 28 March 2023. A Note summarising the CMD was issued along with a Notice of Directions on 3 April 2023.
3. On 13 April 2023, the Tribunal received submissions and supporting documents from the Applicant’s representative in compliance with the Notice of Direction.
4. On 3 May 2023, the Tribunal received further representations from the Applicant’s representative.

5. On 26 June 2023, the Tribunal received an updated rent statement from the Applicant's representative.

The case management discussion

6. The CMD took place by conference call. The Applicant was represented by Mrs Thomson and the Respondent participated personally. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/22/4216.
7. The Tribunal observed that the Respondent had failed to comply with the Notice of Direction issued on 3 April 2023. The Respondent said that he was unaware of any requirement on him to comply with a direction. The Tribunal Clerk confirmed that the Notice of Direction was sent to the Respondent by recorded delivery post and was signed for on 5 April 2023. The Tribunal noted from the updated rent statement lodged that the arrears of rent have increased to £8,440. The Respondent's position was that his property has been damaged as a result of the condition of the property and the value of his property exceeds the value of rent arrears. He indicated that his property has been damaged by dampness and mould. He does not consider that the property is value for money as a result of the repairs required. In response to questions from the Tribunal, the Respondent on one occasion said that he has not been keeping the rental payments in a separate account and on another occasion was not prepared to say whether he was keeping the rent in a separate account. When asked whether he had taken advice, the Respondent explained that he had spoken to a solicitor and was told to make further contact after today's CMD. The Respondent's personal circumstances are such that he lives alone in the property and is unemployed. He has not made any enquiries with the local authority about alternative accommodation. He tried to contact the Citizens Advice Bureau to seek assistance but the office was closed. When asked by the Tribunal whether he opposes the application, he was not prepared to say but indicated that if an eviction order was granted, he would need time to remove his belongings from the property.
8. The Applicant's representative explained that the rent arrears are substantial and equate to almost 12 months of rent. The last payment towards the rent account was in August 2022. No proposal has been made for payment of ongoing rent or repayment of the arrears. It was submitted that it was reasonable in all of the circumstances to grant the order for eviction.

Findings in Fact

9. The parties entered into a short assured tenancy which commenced 1 September 2017.
10. The Applicant's representative served a Notice to Quit and the Notice in terms of Section 19 of the Housing (Scotland) Act 1988 on the Respondent by recorded delivery which were delivered on 9 August 2022.

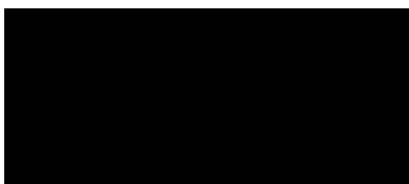
11. As at the date the Notices were served, the Respondent was in arrears of rent.
12. As at the start of these proceedings, some rent was unpaid by the Respondent.

Reason for Decision

13. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. Although the Respondent explained that his property has been damaged as a result of the condition of the property, he did not make any submissions on the legal basis for withholding payment of sums due in terms of the tenancy agreement. There is an equitable remedy available to the Respondent, namely withholding or retaining rent. If the Respondent was exercising such a right, he must do so in good faith. The Respondent failed to lodge any documentation supporting his position and was inconsistent in his responses to the Tribunal about whether rent was being held in a separate account. The Respondent's lack of candour about that was significant and the Tribunal was not satisfied that the Respondent was acting in good faith as to the non payment of rent. The Respondent explained that he was unemployed. The Tribunal formed the conclusion that the tenancy is not sustainable by the Respondent, given the significant arrears and the fact there is no proposal to pay ongoing rent.
14. The Notice to Quit and Notice of Proceedings were served on the Respondent more than 10 months ago. The Respondent has made no enquiries about alternative accommodation. The Tribunal must balance both parties' interests. In circumstances where the tenancy is not sustainable by the Respondent, the Tribunal was satisfied that it was reasonable to grant the order evicting the Respondent from the property.

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.



Legal Member/Chair

27 June 2023
Date