

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/23/0008

Property: 3 Heriot Street, Inverkeithing KY11 1ND (“the Property”)

Parties: Miss Magdalene Jednorowicz, 186 Oxfords Road North, Edinburgh EH13 9EA (“the Applicant”)

Mr Simon Shaughn Butler, 3 Heriot Street, Inverkeithing KY11 1ND (“the Respondent”)

Tribunal Member:

Mark Thorley (Legal Member)
Ann Moore (Ordinary Member)

Decision (in absence of the respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order for eviction should be refused.

Background

1. The applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (the “tribunal”) by application dated 28 December 2022. Accompanying the application was a copy of emails with the respondent together with a copy of the Lease, a copy of the Notice to Leave sent to the tenant, copy Section 11 Notice sent to the Local Authority and a copy of the email as evidence of the Notice sent to the Local Authority.
2. The application was received by the tribunal on 4 January 2023. On 19 January 2023 the application was accepted for determination by the tribunal.
3. Prior to the hearing it became clear that there was a separate application made by the applicant under section 28A (3) of the Housing (Scotland) Act 2006. The application was for the applicant to exercise a right of entry to the property.
4. That right of entry was effective on 30 March 2023. As a result a Gas Safety Certificate was prepared on the same date.

Case Management Discussion

1. At the case management discussion the applicant attended herself. There was no appearance by or for the respondent.
2. The applicant was able to provide certain further information. The basis of the application was that the respondent had failed to respond to emails requesting access to the property in particular for obtaining a Gas Safety Certificate. The applicant had to proceed by way of separate application to the tribunal which had been determined and in which an order had been granted and in which access had taken place on 30 March 2023. That access had been by the use of a key when the respondent was not within the property.
3. The applicant indicated that the respondent's rent was up to date. A Gas Safety Certificate had now been provided.
4. The applicant was also able to provide certain information about the respondent. He had tenanted the property since 1 July 2018. It was a one bedroom property. He appeared to have separated from the mother of his children as he had three children who at some point he had had contact with. There was a suggestion that he might have mental health difficulties. The applicant had got the Police to do a welfare check on him in January 2023. They reported back that he was within the property and was well. He appeared to be working with Amazon.

Findings in fact

1. The parties entered into a Private Residential Tenancy Agreement for the rental of the property at 3 Heriot Street, Inverkeithing KY11 1ND with effect from 1 July 2018.
2. Rent was to be paid at the rate of £460 per calendar month payable monthly and in advance. As part of the Private Residential Tenancy Agreement at clause 19 –

“The tenant was to allow reasonable access to the let property for an authorised purpose where the tenant has been given at least 48 hours' notice, or access is required urgently. Authorised purposes are carrying out work in the let property which the landlord is required to or is allowed to, either by law, under the terms of this agreement, or any other agreement between the landlord and the tenant; inspecting the let property to see if any such work is needed; and carrying out a valuation of the let property. The right of access also covers access by others such as a contractor or tradesman hired by the landlord.

There is nothing to stop the tenant and landlord from reaching agreement on more generous rights of access if both parties want to resolve a non-urgent problem more promptly. The landlord has no right to use or retain keys to enter the let property without the tenant's permission, except in an emergency."

3. The applicant had sent correspondence by email to the respondent on 31 October 2022, 3 November 2022, 10 November 2022 and 15 November 2022. These emails were requests to access the property.
4. The respondent had not provided access to the property.
5. Under reference FTS/HPC/RE/22/4150 the applicant had obtained an order to access the property.
6. The property was accessed by the use of a key on 30 March 2023.
7. The respondent was not within the premises at the time.
8. A Gas Safety Certificate was prepared during that visit.

Reasons for decision

This is a longstanding tenancy of approaching five years. The sole basis upon which eviction was sought was the failure to provide access by the respondent. The tenant had essentially failed to respond to the email communication by the applicant. It was unclear why he had failed to do so. There was a suggestion that there may be mental health issues although the applicant had got the Police to undertake a welfare check on the respondent in January 2023 and the Police had simply confirmed that he was well.

Access to the property had been obtained on 30 March albeit that the applicant had to do so by involving the tribunal.

The tribunal were concerned as to whether it was reasonable in the circumstances to evict the respondent. As narrated this was a longstanding tenancy. The rent was up to date. The property was well maintained. The respondent appeared to be in employment. He had children who appeared to be in the local school. It was unclear as to how much contact he has with the children.

The tribunal were not satisfied it was reasonable to evict the respondent. Access had not been obtained albeit having to be obtained through the use of the tribunal. The property was well maintained. The rent was up to date. There was now a Gas Safety Certificate.

The tribunal took into account the length of the tenancy, the otherwise cooperation by the respondent in terms of paying the rent and maintaining the property. The tribunal

concluded that it was not reasonable in the narrow circumstances of this case to evict the respondent.

Decision

An order for eviction should be refused.

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.

Mark Thorley

Legal Member/Chair:

Date: 11 April 2023