



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

Chamber Ref: FTS/HPC/EV/22/0594

Re: Property at 26 Mossgiel Road, Ayr, KA7 3DL (“the Property”)

Parties:

LAR Housing Trust, F3 Buchan House, Carnegie campus, Enterprise way dunfermline, Fife, KY11 8PL (“the Applicant”)

Mr Micheal Nowack, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (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 order for recovery and possession should be granted in favour of the Applicant.

1. An application was received by the Housing and Property Chamber dated 25th February 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 10 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
 - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 15th May 2020;
 - b. Notice to Leave signed 17th January 2022 stating an application would not be submitted to the Tribunal before 17th February 2022;
 - c. Section 11 notice noting proceedings would not be raised before 25th February 2022;
 - d. Rent statement from 22nd January 2021 to 1st February 2022. This detailed the rent of £470 per month and arrears of £3100;

- e. Copy email dated 17th January 2022 serving Notice to Leave upon the Respondent; and
 - f. Solicitor's trace letter dated 13th January 2022 stating that the Respondent was not able to be traced. Noting that at his parents house, his parents had stated that he is residing with his girlfriend but that his address was declined to be provided.
3. The Tribunal also had before it a copy of the title deeds numbered AYR93954.
 4. On 9th May 2022, all parties were written to with the date for the Case Management Discussion ("CMD") of 16th June 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 30th May 2022. Service by Advertisement was undertaken upon the Respondent from 9th May 2022.

The Case Management Discussion

5. A CMD was held on 16th June 2022 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Kirstie Donnelly, solicitor, TC Young solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
6. Ms Donnelly told the Tribunal that there had been emails from the Respondent stating that it was his intention to return the keys as he was no longer in the Property. The latest email was on 4th May 2022 when he stated that he would return the keys by the end of May. This has not been done. He had also emailed on 24th February 2022 and 7th March 2022 stating that he was not living in the Property and it was his intention to return the keys. No further visits have been undertaken to the Property. Ms Donnelly presumed that this was because the Respondent had made it clear on three occasions by email that he was not living there. She noted that the rent arrears had arisen to £4784 with the last payment made on 6th September 2021. While this is not a rent arrears ground it demonstrated that the Respondent's priority was not to address the rent which is presumably due to him not residing there any longer.
7. The Tribunal was satisfied that efforts had been made to enquire if the Respondent was still residing in the Property. Confirmation had been received by the Applicant directly from the Respondent to confirm that he was not residing in the Property. The Tribunal granted the Order for eviction.

Findings and reason for decision

8. A Private Rented Tenancy Agreement commenced 15th May 2020.
9. The Applicant's staff members visited the Property on 10th December 2021, 20th December 2021 and 24th December 2021. The Property was found to be in the same condition each time with the same lights on. The post was still in the post

box and the bins did not have any waste in them. Enquiries were made with the Respondent's neighbours who said that they had not seen him for 3 months.

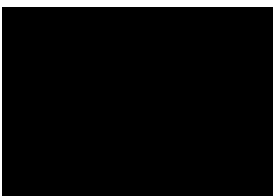
10. In or around January 2022, Sheriff Officers tried to serve paperwork upon the Respondent at his parents' house. The Respondent's parents stated that he resided elsewhere with his girlfriend.
11. The Respondent emailed the Applicant on 24th February 2022. He stated that he was not living in the Property for personal reasons and would start the process of moving out of the Property. On 7th March 2022 the Applicant emailed to say that he had been busy with work and had not been able to move out or return his keys. On 4th May 2022 the Applicant emailed to say that he would return the keys by the end of May 2022. Albeit that the keys have not been returned the emails give a clear indication of the Respondent not residing in the Property.
12. A Notice to Leave was served on 17th January 2022 by email.
13. The Tribunal was satisfied that the Respondent's actions were consistent with him no longer residing in the Property.

Decision

14. The Tribunal found that ground 10 has been established and granted an order in favour of the Applicant.

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.



16th June 2022

Legal Member/Chair

Date