

Housing and Property Chamber
First-tier Tribunal for Scotland



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, Ground 11 of Schedule 3 to that Act and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/18/1752

Re: Property at 143/3, South Gyle Mains, Edinburgh, EH12 9HU ("the Property")

Parties:

Mr Graeme Pearson, 6 Lawson Crescent, South Queensferry, Edinburgh, EH30 9JE ("the Applicant")

Mr Craig Martin, 143/3, South Gyle Mains, Edinburgh, EH12 9HU ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Eviction Order should be made under Ground 11 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

By application, received by the Tribunal on 12 July 2018, the Applicant sought an Eviction Order under Ground 11 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In the supporting documentation, he stated that the Respondent had moved into the Property on 12 April 2018. He had told the Applicant that he was unable to pay the first month's rent or the deposit on that date, but would pay it on the following day. He failed to do so and had paid no rent since. He had also not paid the deposit. The rent was now more than 3 months in arrears.

The Respondent made no written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Riverside House, 502 Gorgie Road, Edinburgh EH11 3AF on the afternoon of 18 September 2018. The Applicant attended the Case Management Discussion. The Respondent was neither present nor represented.

The Applicant reiterated the facts as set out in the application and confirmed that no payments had been received from the Respondent since the date of the application. The Applicant told the Tribunal that he had been persuaded to allow the Respondent to move into the Property without paying the deposit or the first month's rent on the understanding that he would make these payments the following day. The Applicant had also relied on the fact that the Respondent had earlier told him he worked for Lloyds TSB and had provided a contact number for his boss. The Applicant had telephoned the person whose number he had been given, a Rose Bolton. She had confirmed that the Respondent had worked for her for the past year and the Applicant had accepted that in good faith. On later investigation, however, Lloyds TSB had confirmed that they had never heard of the Respondent or his referee.

The Applicant requested permission to amend the application to include Ground 12 of Schedule 3 to the 2016 Act as an alternative ground for the Eviction Order, as the rent was now more than 3 months in arrears. This Ground had not been available to the Applicant at the date of the application. The Applicant provided bank statements in support of his case. He asked the Tribunal to exercise its right to make a decision at a Case Management Discussion and to grant the application and issue an Eviction Order.

Findings in Fact

The Tribunal finds that the tenancy is a Private Residential Tenancy which commenced on 12 April 2018.

The Respondent has failed to pay any rent for the Property since the commencement of the tenancy and has not paid the deposit provided for in the tenancy agreement.

The Applicant served a Notice to Leave on the Respondent on 25 April 2018, on the basis that he had breached a term of the tenancy agreement by failing to pay the deposit and the rent.

The Respondent has made no written representations to the Tribunal and, specifically, has not indicated that his failure to pay the rent is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states that the Tribunal may do anything at a case management discussion the Tribunal may do anything which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information that it required in order to make a decision, and determined to do so without a hearing.

The Tribunal was prepared to allow the amendment requested by the Applicant, to include Ground 12 as an alternative ground for an Eviction Order. In view of the wilful and deliberate failure of the Respondent to pay the deposit and the rent, and also the fact that he had provided a completely false reference at the outset, the Tribunal would, if required, have granted the request for an amendment without requiring separate intimation to the Respondent, as it was a Ground that had not been available at the time of the application, and the Tribunal would have issued an Eviction Order under Ground 12. The Tribunal was, however, satisfied that the wilful and deliberate failure to pay the deposit was established and it was reasonable to grant the Eviction Order under Ground 11. In failing to pay the deposit of £750, the Respondent had failed to comply with an obligation under the tenancy (other than the requirement to pay rent). The Tribunal considered it reasonable to issue an Eviction Order on account of that fact and there was no evidence before the Tribunal to suggest that the failures of the Respondent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Decision

The Tribunal determined to issue an Eviction Order in respect of 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.

George Clark

18 September 2018

Legal Member/Chair

Date