



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/22/2251

Re: Property at 69E Sandeman Street, Dundee, DD3 7LB (“the Property”)

Parties:

Quarry Management Investment Company Ltd, Quarry House, Main Street, Inchtute, PH14 9RN (“the Applicant”)

Mr Marcin Legierski, 69E Sandeman Street, Dundee, DD3 7LB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 30 June 2022 the Applicants representatives J Myles & Company, Solicitors, Dundee applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of service, a rent statement, mandate, and Section 11 Notice and intimation to the local authority in support of the application.
2. By Notice of Acceptance dated 14 September 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 2 November 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 7 December 2022. The Applicant's director, Mr Mel Matthews was in attendance and was represented by Mr Joseph Myles from the Applicant's representatives. The Respondent attended in person.
5. The parties were in agreement that the Respondent entered into a Private Residential Tenancy that commenced on 6 September 2019 at a rent of £480.00 per calendar month. It was also agreed that the Respondent had not paid any rent since July 2021.
6. Mr Myles advised the Tribunal that no rent had been paid since the application had been made and that the rent due had increased to £14600.00.
7. The Respondent disputed that this amount was due. He said that there had been problems with the property since the beginning of 2020 and although some work had been carried out at the property the issues had not been resolved. He explained that the roof at the property had been leaking for two years causing water to come into his living room when it rained. He said that more recently water was also leaking into the kitchen. He also said that the oven was not working and had not been repaired despite requests. He also said that he had replaced the couches in the living room as they were old but the Applicant had not come to remove the old couches which he had to store in the spare bedroom. He said he had reported the issues to the Applicant but nothing had been done and the Applicant only wanted money. The Respondent said it was not fair that the Applicant was asking for the whole rent when the property was not in a proper condition and he could not use the oven and the living room was leaking. The Respondent went on to say that his neighbour was experiencing similar problems with their flat but that they had a different landlord. He said that the problem was coming from the chimney but nothing had been done about it.
8. For the Applicant Mr Myles said that the Applicant had been unaware of the issues and that in a phone call on 26 May 2022 after the Respondent had been served with the Notice to Leave the Respondent did for the first time mention the leaking roof but had also said that he needed an additional 28 days to move out and in exchange would pay £1000.00. Mr Myles went on to say the Respondent had never made any written complaints about the condition of the property and that on occasions when the Applicant had tried to inspect the property access had been refused. He said that the Respondent had made sporadic payments of rent up to June 2021 and it appeared he had not sought advice with regards to the issues that he now complained about.
9. The Respondent said that he recalled his conversation with Mr Myles and that he had known Mr Matthews for a long time as he had previously rented a

property from him in 2009 or 2010 and he had been a good landlord. He went on to say that he had asked for an additional 28 days to find another property and that if allowed to stay could pay more money but that subsequently he had sought advice from the Citizens Advice Bureau who had advised him to remain in the property until the Tribunal made a determination. The Respondent disputed that he had refused access to the property. The Respondent went on to say that the Applicant was aware of a problem with the roof as repairs had been carried out to the ceiling of the stairs to the property as it had looked as though it was going to collapse but no repairs had been carried out to the roof.

10. In response to a query from the Tribunal the Respondent said that he did not think that it would be possible for him to remain in the property and that the relationship between him and the Applicant had broken down. He went on to say that although he disputed that he was owe the Applicant £14600.00 he did accept that some rent was due and that this would amount to more than the equivalent of one month's rent and that he had been in arrears for at least three consecutive months at the time the Notice to Leave was served.
11. For the Applicant Mr Myles submitted that from the commencement of the tenancy the Respondent had made sporadic payments of rent. He had not advised the Applicant of the issues until after a Notice to Leave had been served. If the property had been as bad as was said the Respondent could have moved out or taken advice. He said the Respondent could have submitted a written response in advance of the CMD and in any event had previously said he needed an additional 28 days to find another property. In the circumstances it was reasonable to grant the order.

Findings in Fact

12. The parties entered into a Private Residential Tenancy that commenced on 6 September 2019 at a rent of £480.00 per calendar month.
13. The Respondent made sporadic payments of rent up until June 2021 and has not paid any rent since that date.
14. The Respondent was served with a Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act dated 4 May 2022.
15. Intimation of the proceedings was sent to Dundee City Council by way of a Section 11 Notice on 30 June 2022.
16. The Respondent accepts that at the date of service of the Notice to Leave he was in arrears of rent for three consecutive months.
17. The Respondent accepts that at the date of the CMD there is more than the equivalent of one month's rent due by him to the Applicant.
18. The Respondent lives alone in the property.

19. The Respondent does not think he wishes to remain in the property.

Reasons for Decision

20. The Tribunal was satisfied from the documents provided and it was agreed between the parties that they entered into a Private Residential Tenancy Agreement that commenced on 6 September 2019 at a rent of £480.00 per calendar month. It was also agreed that the Respondent had been properly served with a Notice to Leave and the Tribunal was satisfied from the documents produced that intimation of the proceedings had been given to Dundee City Council by way of a Section 11 Notice on 30 June 2022.

21. Although the Respondent disputed the amount of the rent said to be due by him to the Applicant, he did not dispute that some rent was due and that this would, without putting a specific figure on it, amount to more than the equivalent of one month's rent as at the date of the CMD. He also agreed that he had been in arrears of rent for three consecutive months at the date of service of the Notice to Leave. The Tribunal was therefore satisfied that procedurally the grounds for eviction under Ground 12 of Schedule 3 had been met subject to the Tribunal being satisfied that it was reasonable in the circumstances. The Respondent indicated that he no longer wished to remain in the property and the Applicant was also prepared in that event to withdraw its application under case reference number FTS/HPC/CV/2252. In these circumstances the Tribunal considered it was reasonable to grant the order sought.

Decision

22. Having fully considered the written representations and documents together with the oral submissions and being satisfied that it has sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.

Graham Harding

Legal Member/Chair

9 December 2022

Date