



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/22/3391

Property : Flat 1/L, 12 Kilberry Street, Dundee DD3 6DH (“Property”)

Parties:

Dominic Gautier-Elder, 43 Step Row, Dundee DD” 1AH (“Applicant”)

Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee DD1 4BJ (“Applicant's Representative”)

Cassie Anne Paterson and Sean Murray McLaughlan, Flat 1/L, 12 Kilberry Street, Dundee DD3 6DH (“Respondent”)

Tribunal Members:

**Joan Devine (Legal Member)
Janine Green (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement dated 26 November 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 8 August 2022 (“Notice to Leave”); a rent statement showing arrears of £4,165; email to the Respondent dated 8 August 2022 attaching the Notice to Leave; letter from the Applicant’s Representative to the Respondent dated 8 August 2022 enclosing Notice to Leave; royal mail proof of delivery dated 10 August 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 25 May 2022 and sheriff officer's execution of service certifying service of the Application on 12 October 2022.

Case Management Discussion

A case management discussion took place before the Tribunal on 21 November 2022 by teleconference. Calvin Gordon of the Applicant's Representative was in attendance. There was no appearance by the Respondent. Mr Gordon told the Tribunal that there had been a number of issues as regards the boiler in the Property. After several visits by a number of engineers, parts were replaced in order to fix the boiler. Mr Gordon said that the Applicant's mother purchased electric heaters to be used in the Property while the boiler was not working. He said that Parties agreed a credit of £325 to compensate for the boiler being broken.

The Tribunal asked about the failure to comply with the pre-action requirements. Mr Gordon submitted that failure to comply did not invalidate the application. In addition he said that the Applicant did not comply as the Respondent had said they were withholding rent due to the boiler issue. They said the funds were held in a bank account. In those circumstances he submitted there was no point in complying.

As regards the question of reasonableness, Mr Gordon said that the Applicant is 21 years old and does not own other property. He is at college and works part time earning £800 per month net. His mortgage is £460 / month. Other expenses associated with the Property are £30 / month. He also has a car loan of £200 / month. Mr Gordon said that the Applicant lives with his mother and is struggling financially as he has not been receiving the rent for the Property. Mr Gordon said that the Applicant may sell the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 26 November 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by email and by recorded delivery post on 8 August 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 8 September 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 25 May 2022.
5. Notice of the date of the case management discussion had been given to the Respondent on 12 October 2022.

6. The Respondent had failed to pay the rent in full for the period 29 January 2022 to 29 July 2022.
7. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statement of rent arrears and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

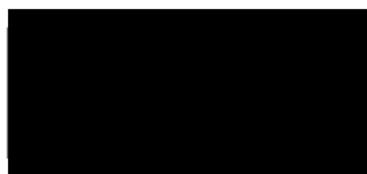
Decision

The Tribunal grants an order for possession 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.

Legal Member:



Date: 21 November 2022