



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/22/3603

Re: Property at 3/2 59 Airlie Street, Hyndland, G12 9SR (“the Property”)

Parties:

Mr Christopher Smith, 7171 Aedan Court, San Diego, California, United States (“the Applicant”)

Mr Daniel Hewitt, 3/2 59 Airlie Street, Hyndland, G12 9SR (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ann Moore (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.

Background

1. An application was received by the Housing and Property Chamber dated 3rd October 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 ground 12 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 9th March 2021;
 - b. Notice to Leave dated 26th August 2022 stating an application would not be submitted to the Tribunal before 26th September 2022 together with email serving it upon the Respondent which was dated 26th August 2022;
 - c. Section 11 notice together with email to the local authority dated 27th September 2022;

- d. Pre action requirements letter dated 20th June 2022; and
 - e. Rent statement from 9th March 2022 to 9th August 2022. This detailed the rent of £699 per month and arrears of £3536;
3. On 29th November 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 1st February 2022 at 10am at by teleconferencing. The letter also requested all written representations be submitted by 20th December 2022.
 4. On 30th November 2022, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of intimation dated 30th November 2022.

The Case Management Discussion

5. A CMD was held on 1st February 2022 at 10am at by teleconferencing. The Applicant was not present but was represented by Mr John McKeown, Trainee Solicitor, Jackson Boyd Solicitors. The Respondent was not present nor represented. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
6. Mr McKeown told the Tribunal that he had sent an email in on the morning of the CMD advising of the increased amount of arrears. The Tribunal explained that there was industrial action occurring today and that the email had not been able to be forwarded on. The Tribunal noted that any changes should be notified 7 days in advance of the CMD. However, as he is an officer of the court the Tribunal was willing to take his word that the arrears had increased. Mr McKeown said that the arrears were now £4576. One payment had been made on 16th January 2023 for £400. This is less than the rent which is £699. There has been no contact from the Respondent regarding this payment. The last contact was in September 2022 when the Respondent had contacted the Applicant’s letting agent after the Notice to Leave had been served. At that time he had offered to pay half of the arrears that month and the remaining half the following month. No payment was forthcoming. He paid £750 on 9th November 2022 then nothing until the payment mentioned above on 16th January 2023.
7. Mr McKeown told the Tribunal that the letting agent has made numerous attempts to contact the Respondent including visiting the Property. On visiting the Property in October 2022, with the intention to do a property inspection, the Respondent sent very blunt WhatsApp messages to the letting agent asking that they do not contact him again.
8. Mr McKeown is not aware of any Universal Credit entitlement. When the Respondent had applied for the Property a credit check was undertaken and he was confirmed to be in employment. The Applicant is not aware of any changes to the Respondent’s circumstances.
9. Mr McKeown confirmed that the Respondent lives in the Property on his own with no dependents. There have been no adaptations made to the Property for his use of it.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 9th March 2021.
11. The Respondent persistently failed to pay his rent charge of £699 per month. The rent payments are due to be paid on 9th day of each month.
12. The arrears outstanding totalled £4576. This is higher than the amount that was detailed within the application.
13. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the CMD.
14. There are no outstanding Universal Credit issues that the Applicant is aware of.

Decision

15. The Tribunal found that ground 12 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.

G Miller

1st February 2023

Legal Member/Chair

Date