



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/23/3406

Re: Property at 12 Rose Street, Dunfermline, Fife, KY12 0RE (“the Property”)

Parties:

Mrs Elaine Duncan, 15 Kirkwood Crescent, Crossford, Dunfermline, Fife (“the Applicant”)

Mr Paul Doninger AKA Kent, 12 Rose Street, Dunfermline, Fife, KY12 0RE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Angus Anderson (Ordinary Member)

Decision (in absence of the Respondent)

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 25 September 2023 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under grounds 10, 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave with proof of service, Section 11 Notice with copy email together with other documentation in support of the application.
2. By application dated 5 December 2023 the Applicant applied to the Tribunal administration for service by advertisement of the application on the Respondent as he had abandoned the property and his address was unknown.
3. The application was accepted on 5 January 2024 and a Case Management Discussion (“CMD”) assigned.

4. Intimation of the application and CMD on the Respondent was by way of Service by advertisement on the Housing and Property Chamber website conform to Certificate of Advertisement dated 28 March 2024.

The Case Management Discussion

5. A CMD was held by teleconference on 28 March 2024. The Applicant attended in person. The Respondent did not attend nor was he represented. The Tribunal being satisfied that there had been proper service by way of Service by Advertisement determined to proceed in his absence.
6. The Tribunal noted that the parties had entered into a Private Residential tenancy that had commenced on 8 March 2018 at a rent of £430.00 per calendar month. The Applicant advised the Tribunal that the tenancy had proceeded normally until about April 2023. She explained that shortly before then the Respondent had stopped paying rent. The Applicant said that she had become suspicious when a new key to the property had been put through her letterbox by the Respondent and she had been unable to contact him by telephone. She said that on attending at the property the external mailbox was overflowing and the door had been damaged. The Applicant said she had been able to gain entry to the property and it was apparent that the Respondent had moved out. The Applicant went on to say the Respondent had caused damage in the property and this had been reported to the police. The Applicant said that she had been told that the police had forced entry to the property in April 2023 causing damage to the door which will need to be replaced. The Applicant estimated that the overall damage to the property amounted to £15000.00. She said that the property remained empty as nothing could be done with it until an order was obtained for the Respondent's eviction.
7. In response to a query from the Tribunal the Applicant confirmed that she had left a notice for the Respondent advising of her intentions to apply to the Tribunal. She confirmed that the Respondent had not returned to the property.
8. With regards to the application for an eviction under ground 12 of Schedule 3 of the 2016 Act the Applicant accepted this had not been included on the Notice to Leave of 25 June 2023 and that no pre-action protocol letters had been sent to the Respondent.
9. With regards to the Application under ground 11 of Schedule 3 of the 2016 Act the Tribunal noted that the application and the Notice to Leave was principally raised in respect of the Respondent's failure to provide a current telephone number and email address although it appeared that messages and emails had been delivered but not opened.

Findings in Fact

10. The parties entered into a Private Residential Tenancy that commenced on 8 March 2018 at a rent of £430.00 per calendar month.
11. At an unknown date before June 2023 the Respondent ceased to occupy the property.
12. So far as the Applicant is aware the Respondent has not returned to the property since leaving and apart from providing the Applicant with a new key for the property has made no contact with her.
13. Fife Council have been given intimation of the proceedings by way of a Section 11 Notice.

Reasons for Decision

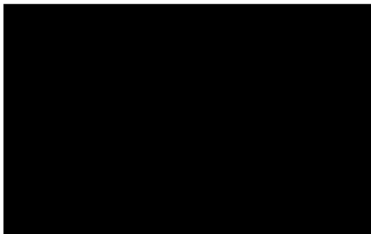
14. The Tribunal was satisfied from the written representations and documents together with the oral submissions that the parties entered into a Private Residential tenancy that commenced on 8 March 2018 at a rent of £430.00 per calendar month. The Tribunal was also satisfied that a valid Notice to Leave was served by email on the Respondent on 25 June 2023 and that a Section 11 notice was sent to Fife Council.
15. The Tribunal was satisfied from the written representations and the Applicant's oral submissions that the Respondent is no longer living in the property and moved out some time before the Applicant served the Notice to Leave in June 2023 and has not returned to the property since. The Tribunal is therefore satisfied that procedurally an eviction under ground 110 of Schedule 3 has been established and further in the circumstances given that the Respondent is clearly not living in the property that it would be reasonable to grant an order for his eviction on this ground.
16. Although the Applicant may have had evidence to support an eviction under ground 11 of Schedule 3 of the 2016 Act with regards to damage caused at the property by the Respondent, the Notice to Leave and her application was based on the Respondent's failure to provide current telephone numbers and email addresses. The tribunal was not satisfied that the Applicant had shown the Respondent to be in breach of the tenancy agreement in this regard and refused to grant an order under ground 11.
17. The Applicant accepted that she had not included ground 12 in the Notice to Leave sent to the Respondent and also accepted that no pre-action protocol letters had been sent to the Respondent. In the circumstances the Tribunal was not persuaded that it should exercise its discretion under Section 52(5)(b) of the 2016 Act and allow the application to proceed under ground 12.

Decision

18. The Tribunal being satisfied 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 10 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.



Legal Member/Chair

28 March 2024
Date