



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/23/2083

Re: Property at 2 Moir Place, Arbroath, DD11 4HF (“the Property”)

Parties:

Mr Paul Dewar, 75 Dunlin Road, Grove Hill, Hemel Hempstead, HP2 6LX (“the Applicant”)

Mr Stewart Geddes, 2 Moir Place, Arbroath, DD11 4HF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Angus Lamont (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 26th June 2023. 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 the Respondent not adhering to ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 2nd October 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 8th November 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 23rd October 2023.
3. On 3rd October 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 3rd October 2023.

4. A CMD was held on 8th November 2023 at 10am by teleconferencing. Neither the Applicant nor the Respondent were present or represented. There was no explanation why the Applicant, in particular, was not present or represented. At on or around 10.10 am the Tribunal Clerk contacted the Applicant's representative to confirm if they wished to proceed with the application. There was no answer as the number went straight to an answerphone. A message was not left as it was not appropriate. The Tribunal dismissed the case as it was not clear that the Applicant wished to rely on the matters within the case. The application was dismissed as it was not clear that the Applicant wished to rely on the case proceeding.
5. On 5th December 2023, the Applicant's representative, Ms Charlotte Macpherson, Property Manager, Wardhaugh, emailed to request that the case be appealed as she was not present at the CMD due to human error. She had misread the letter from the Housing and Property Chamber and did not realise that a date had been set for the CMD. She had a long standing commitment to attend National Lettings Day in Edinburgh on the date of the CMD. She noted that the tenant has been not responding to her correspondence and the Applicant still wished to get an order for eviction.
6. The Tribunal asked for clarification as to how exactly she wanted to proceed whether it be a permission to appeal or to recall the application back to a CMD.
7. On 20th December 2023, Ms Macpherson emailed the Housing and Property Chamber to advised that she wished her email to be considered an application to recall the case and for it to return to a CMD.
8. The recall was allowed by the Tribunal. The Tribunal accepted that it was in the interests of justice to allow the recall to be granted given that Ms Macpherson would have intended to attend the CMD had she been aware of the date. However, she had not appreciated that letter contained the date of the CMD and had only noticed the date for the Respondent had to respond with any representations.
9. On 8th April 2024, all parties were written to with the date for the Case Management Discussion ("CMD") of 1st May 2024 at 10am by teleconferencing.

The Case Management Discussion

10. A CMD was held on 1st May 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Charlotte Macpherson, Property Manager, Wardhaugh. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the hearing.
11. Ms McPherson said that the Respondent has not been in contact since 2022. The arrears are now £10948.50. Ms McPherson said that her company has been trying to trace the Respondent but had not been successful in doing so. She said that she had not asked for a welfare visit by the Police. A window was

broken (from the outside of the Property) in early 2024. This required to be fixed from the outside of the Property as Ms McPherson's company could not gain access from inside the Property. It was seen that there were belongings in the Property. The Tribunal was concerned about the welfare of the Respondent as to whether he had taken ill in the Property. Ms McPherson said that there was no reason to consider this to be a possibility. The Respondent's van has gone from where it was and he has not been in contact with his usual work contractors. She said she was not suspicious of the Respondent having passed away in the Property as there was no malodorous smell coming from the Property when the window was fixed. She said that the neighbours were very diligent and would have reported any issues arising from such a situation.

12. Ms McPherson told the Tribunal that she did not consider the Respondent to have any particular vulnerabilities and the Property had not been adapted for him. She said that the Applicant has suffered financial loss from the loss of income from the non payment of rent. The Applicant now wishes to sell the Property as a consequence of this financial impact.

13. The Tribunal was satisfied that it was appropriate to grant an order for eviction.

Findings and reason for decision

14. A Private Rented Tenancy Agreement commenced 13th August 2020.

15. The Respondent persistently failed to pay his rent charge of £470 per month. The rent payments are due to be paid on 13th day of each month.

16. Arrears accrued to more than three months rent payment at the date of application and was now more than 23 months in arrears at the date of the CMD.

17. The arrears are now £10948.50. This is a higher amount than was detailed in the application.

18. There are no issues of reasonableness that prevent an order from being granted.

Decision

19. 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.



1 May 2024

Legal Member/Chair

Date