



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/23/2353

Re: Property at 10/4 Arthurstone Terrace, Dundee, DD4 6RS (“the Property”)

Parties:

Miss Susan Young, 1 Harestane Crescent, Dundee, DD3 0LQ (“the Applicant”)

Ms Carrie Morrison, Mr Chris Donaldson (SBA), 10/4 Arthurstone Terrace, Dundee, DD4 6RS; Unknown, Unknown (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property and that the period of charge should be dispensed with in terms of Section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007.

.

Background

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondents from the property.
2. A case management discussions (“CMD”) took place in this case on 14 February 2024. The Tribunal issued a note following that discussion. The Tribunal assigned a CMD for 30 April 2024 at 10am. On 26 March 2024, the Tribunal issued a letter to the First Respondent providing details of the CMD together with joining instructions. On the same date, the Tribunal intimated

details of the CMD to the Second Respondent by advertisement on the Housing and Property Chamber website

The case management discussion – 30 April 2024

3. The CMD took place by conference call. The Applicant was represented by Mr Calvin Gordon, solicitor. The Respondents did not join the conference call and the discussion proceeded in their absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/23/2355. The Applicant's representative explained that an up to date rent statement was lodged on 15 April 2024, which shows that the rent arrears have increased to £20,570. Despite the First Respondent's promises to pay rent, no payments have been made to the rent account. It is believed that both Respondents are in employment and do not have dependents. The Second Respondent is believed to have moved out of the property, although the Applicant does not know when that happened. The Applicant's representative moved for an order for eviction to be granted. In addition, he moved to dispense with the period of charge in terms of section 216(4) of the Bankruptcy and Diligence (Scotland) Act 2007. In addition, the Applicant's representative moved to dispense with the period of notice in the notice of removal in terms of Rule 41C of the Rules. If the Tribunal grants the order, the Respondents will be notified of the decision. Given the very substantial rent arrears, it was submitted that it is appropriate to dispense with the period of charge, given the financial prejudice to the Applicant in waiting for enforcement of any order.

Findings in Fact

4. The parties entered into a private residential tenancy which commenced 28 June 2019.
5. The Applicant served Notice to Leave on the Respondents by email and recorded delivery on 25 May 2023.
6. The Respondents have accrued rent arrears which equate to more than 6 months' rent due in terms of the tenancy.

Reason for Decision

7. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicant relied upon ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondents failed to participate in the CMD and failed to lodge any written representations. The rent statement produced demonstrates that the Respondents have been consistently in arrears of rent since November 2020. The rent arrears due are now very substantial. The Tribunal was satisfied that ground 12A was established. The Respondents have failed to engage with the Applicant in

relation to rent arrears and despite promising to make payment, the First Respondent has failed to make payment. In these circumstances, the Tribunal was satisfied that it was reasonable to grant the order for eviction.

8. Payment of rent is the Respondents' primary obligation in terms of the tenancy agreement. The Respondents have been given fair notice of these proceedings. Given the lack of engagement from the Respondents and the level of rent arrears, the Tribunal was persuaded that cause had been shown to dispense with the period of charge. The Tribunal was not however persuaded that the period of notice in the notice of removal should be dispensed with.

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.

Nicola Irvine

Legal Member/Chair

30 April 2024

Date