



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/20/1669

Re: Property at 58 Ivanhoe Drive, Glenrothes, Fife, KY6 2ND (“the Property”)

Parties:

Mr Kevin Masson, 11 Milnwood Court, Glenrothes, Fife, KY6 2PD (“the Applicant”)

Miss Erin Storrar, 58 Ivanhoe Drive, Glenrothes, Fife, KY6 2ND (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondent for possession of the Property at 58 Ivanhoe Drive, Glenrothes, KY6 2ND under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 6 August 2020, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

- 2 The application was accompanied by a Notice to Leave dated 11 March 2020, a Form AT6 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council dated 25 June 2020.
- 3 In response to enquiries from the Tribunal, the Applicant explained in an email dated 8 September 2020 that there was no written tenancy agreement with the Respondent as parties viewed the arrangement as temporary when the Respondent moved into the Property in July 2019 when she was experiencing difficulties. He went on to explain that the Respondent had taken over the liability for Council tax in August 2019. He also set out how arrears of £1850 to March 2020 had accrued.
- 4 On 15 September the Applicant produced photographs which he explained showed him delivering the Notice to Leave and an AT6 at the Property.
- 5 On 29 September 2020, the Tribunal accepted the application under Rule 9 of the Regulations.
- 6 On 9 October 2020, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 12 November 2020. The Respondent required to lodge written submissions by 30 October 2020. This paperwork was served on the Respondent by Alan Bradford, Sheriff Officer, Dundee on 12 October 2020 and the Execution of Service was received by the Tribunal administration.
- 7 By way of a Notice of Direction dated 22 October 2020 the Tribunal requested the Applicant lodge any documentation to show that parties had agreed rent, and that the Respondent had paid rent. The Tribunal also requested the Applicant to lodge an up to date rent statement. In response the Applicant lodged a series of text messages with the Respondent and an up to date rent statement.

Case Management Discussion

- 8 The Tribunal proceeded with the Case Management Discussion on 12 November 2020 by way of teleconference. The Applicant was in attendance and represented himself. He was supported by his mother. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.

- 9 The Tribunal had before it the Notice to Leave dated 11 March 2020, the Form AT6, the emails of 8 and 15 September 2020 with photographs and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council dated 25 June 2020 together with numerous text messages between the Applicant and Respondent and a rent statement to 28 October 2020.
- 10 The Tribunal confirmed with the Applicant that he was looking for the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 ("the 2016 Act").
- 11 The Tribunal asked the Applicant to explain why there was no written tenancy agreement between the parties. The Applicant explained that the Respondent was a friend. She had found herself in a difficult domestic situation and as he had the Property, he offered to help her out through the difficult time by offering her the Property to live in in the meantime. They had not agreed when she would move out. He went onto explain that they had discussed rent before she moved in and agreed that this should be £450 per month. The Respondent had viewed the Property around about 22 July 2019, had liked it and moved in more or less straight away. He referred the Tribunal to the text messages to show that they had agreed rent of £450 and that he had asked her for payment when she started to go into arrears between November 2019 – March 2020 when he had served the Notice to Leave. After service of the Notice the Applicant explained he had not been in contact with the Respondent as she had gone to the Council who had advised her to call the Police if the Applicant tried to evict her without an Order. The Respondent then blocked him.
- 12 With regard to the Notice to Leave, the Applicant explained that he had originally served a Notice to Leave on the Respondent by Recorded Delivery post a few weeks before. However, that had been returned to him as the Respondent had refused to sign for it. Accordingly he served the Notice to Leave dated 11 March 2020 on her by personally delivering it to the Property on 12 March 2020. The Tribunal noted that this Notice to Leave relied on Ground 12 of Schedule 3 of the 2016 Act, being the rent arrears Ground and set out the full reasons for his reliance on that Ground. With reference to the rent statement, the Tribunal noted the Respondent was in arrears of £1850 to March 2020 and that she had been in arrears since November 2019. The Tribunal also noted that in terms of the Notice to Leave action could not be taken against the Respondent until after 13 April 2020.

- 13 The Tribunal enquired as to whether these arrears had been caused by a delay or failure to pay any benefit. The Applicant explained that the Respondent was at the time she moved into the Property a bar maid in his local pub. He understood that about a month ago she had stopped working there and was probably now claiming benefits. However arrears had accrued mainly whilst she was in employment and were £4550 to the 28 October 2020. The Tribunal noted the Respondent had last paid rent in December 2019 and had paid nothing since then.
- 14 The Tribunal enquired why the Applicant had then served an AT6 on the Respondent on 25 June 2020. He explained that he thought this was the next step in the process. He explained that he had served Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 on Fife Council on 25 June 2019 also.

Findings in Fact

- 15 The Applicant and the Respondent entered into an unwritten Private Residential Tenancy Agreement in July 2019 in relation to the Property. The Respondent agreed to pay the Applicant a monthly rent of £450.
- 16 The Respondent paid the Applicant rent of £450 on 29 July 2019, 4 September 2019 and 19 October 2019 and then started to fall into arrears. The Respondent last paid rent of £450 in December 2019 towards the arrears from November 2019. She has paid no rent since then.
- 17 The Respondent was employed as a bar maid when she moved into the Property in July 2019. The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.
- 18 On 11 March 2020, the Applicant served a Notice to Leave on the Respondent by delivering it to her at the Property requesting that she remove from the Property by 13 April 2020.
- 19 At the time of serving the Notice to Leave the Respondent was in arrears of rent of £1850. She had been in arrears of rent for more than three consecutive months.
- 20 The Applicant mistakenly served an AT6 Notice on the Respondent on 25 June 2019. This had no effect.
- 21 The Respondent's arrears to 28 October 2020 are £4550.
- 22 The Respondent remains in the Property.

23 A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Fife Council on 25 June 2020.

Reasons for Decision

24 The Tribunal was satisfied on the basis of the oral submissions made by the Applicant and with reference to the text messages lodged that parties had entered into a tenancy agreement in July 2019. Although it appeared that parties may not have been aware that they were doing so, by agreeing rent in return for the Respondent living in the Property they had entered into a Landlord and Tenant relationship and had created a Private Residential tenancy in terms of Section 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

25 The Tribunal was also satisfied on the basis of the Applicant's submissions and the text messages that parties had agreed that the Respondent would pay a monthly rent of £450. The Tribunal was satisfied and had no reason to doubt that the Respondent had fallen into arrears and that by the time the Applicant came to serve the Notice to Leave on 11 March 2020, she had been in arrears for three or more consecutive months. The Notice to Leave complied with the requirements of Section 62 of the 2016 Act.

26 The Tribunal was satisfied that the Respondent was in arrears of £4550 being the equivalent of approximately 10 months' rent. The Tribunal was satisfied the Respondent had been in arrears for a continuous period of more than three months. The Tribunal was satisfied the arrears had not been wholly or partially caused by a delay or failure in the payment of any benefit to the Respondent whom the Tribunal accepted had been in employment when she moved into the Property and when she had started to accrue arrears up to the service of the Notice to Leave. In the circumstances the Applicant had satisfied the requirements of Ground 12 of Schedule 3 of the 2016 Act. The Tribunal noted the Applicant had served the appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. In the circumstances the Applicant is entitled to repossess the Property under Section 51 and Ground 12 of Schedule 3 of the 2016 Act.

Decision

27 The Tribunal granted an order for repossession 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.

Shirley Evans

12 November 2020

Legal Member

Date