



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Residential Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/1966

Re: Property at Flat 4, 6 Queich Place, Kinross, KY13 8DF (“the Property”)

Parties:

Mrs Gena Tannock, 18 Tarvit Avenue, Cupar, Fife, KY15 5BW (“the Applicant”)

Mr Tomasz Bryla, sometime Flat 4, 6 Queich Place, Kinross KY13 8DF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 14 September 2020, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Residential Tenancies) (Scotland Act 2016 (“the Act”). The Ground relied on was Ground 11 of Schedule 3 to the Act.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 1 July 2019 at a monthly rent of £420.

The Applicant stated that the Respondent had breached the terms of six Conditions of the Tenancy Agreement. He had allowed his girlfriend and her children to move in without prior permission from the Applicant (Condition 11), had failed to notify the Respondent in writing of the names and relationships of other residents (Condition 12), had allowed three other persons and numerous pets to live in the Property thus allowing it to become overcrowded (Condition 13), had failed to ensure the Property and its fixtures and fittings were kept clean during the tenancy (Condition 16), had removed the fence from around the driveway and the garden and had used the

same to construct a pen, thereby altering the fixtures and fittings without the consent of the Applicant (Condition 27) and had kept in the Property two cats, a chicken, a caged rabbit and a large fish tank, without the consent of the Applicant (Condition 34). The application paperwork also included a Schedule of photographs of the Property, showing evidence of pets living in the Property.

The Applicant provided the Tribunal with a copy of a Notice to Leave dated 6 March 2020, which advised the Respondent that the Applicant intended to apply for an Eviction Order on the Ground that the Respondent had breached terms of the Tenancy Agreement and that the application would not be made before 6 April 2020. The Applicant also provided evidence of service on the Respondent of the Notice to Leave on 6 March 2020.

On 13 October 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 3 November 2020. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 16 November 2020. The Applicant was represented by Mr Kenneth Gray of Williams Gray Williams, solicitors, Cupar. The Respondent was not present or represented. Mr Gray asked the Tribunal to determine the application without a Hearing and to issue the Eviction Order on the ground that there had been multiple breaches of the terms and conditions of the Tenancy Agreement and that it was reasonable in all the circumstances, to issue the Order. He advised that it appeared that the Respondent and those who had been living with him, had now vacated the Property, but the Applicant could not be certain of that fact, so still wished the Eviction Order to be issued.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

Ground 11 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy and that the Tribunal may find that Ground 11 applies if the tenant has failed to comply with a term of the tenancy and the Tribunal considers it to be reasonable to issue an Eviction Order on account of that fact.

The Tribunal was satisfied that there had been breaches of multiple Conditions of the Tenancy Agreement and that the Respondent had not chosen to contest the facts or to argue that it would not be reasonable to issue an Eviction Order against him. In particular, the Respondent had given up to another person part of the Property, by allowing his girlfriend and her three children to move in, without obtaining prior written permission from the Applicant. This was a clear and very serious breach of the obligations imposed by Clause 11 of the Tenancy Agreement. He had also breached Clause 12 by failing to tell the Applicant in writing the name and

relationship to him of a person aged 16 or over who was occupying the Property as her only or principal home. The Tribunal could not determine whether, by allowing his girlfriend and her children to move in, the Respondent had allowed the Property to become overcrowded and had, therefore, breached Clause 13 of the Tenancy Agreement. The Tribunal was satisfied that, by removing fences, the Respondent was in breach of Clause 27 of the Tenancy Agreement and that he had clearly breached the terms of Clause 34 of the Tenancy Agreement by keeping a number of pets in the Property without the prior written consent of the Applicant. Accordingly, the Tribunal determined that Ground 11 applied, as the Respondent had failed to comply with a number of terms of the tenancy.

The Tribunal considered carefully all the breaches of the terms of the Tenancy Agreement and concluded that a number of them were serious and that it was reasonable to issue an Eviction Order. The Applicant had entered into the Tenancy Agreement on the basis that the Respondent would be living alone in the Property and this situation had been completely altered by the Respondent's actions in allowing four others to move in, without seeking the consent of the Applicant. This was a flagrant and serious breach which, given the number of people who had moved in, of itself justified the Tribunal in deciding that it was reasonable to issue an Eviction Order. The introduction, without consent, of such a large number of pets, was also of itself sufficiently serious for the Tribunal to decide that it was reasonable to issue the Order.

The Tribunal noted that the provisions of the Coronavirus (Scotland) Act 2020 did not apply to the present case, as the Notice to Leave was served before 7 April 2020.

Decision

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

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: George Clark

Date: 16 November 2020