



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 ('the Act')

Chamber Ref: FTS/HPC/EV/18/3503

Re: Property at 44 Belhaven Road, Hamilton, ML3 9RR ("the Property")

Parties:

Mr William AKA Billy White, 9 Grosvenor Close, Tidworth, SP9 7GL ("the Applicant")

Ms Laura Murray, 44 Belhaven Road, Hamilton, ML3 9RR ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

- Background

This is an application for an eviction order in regard to the Respondent's private residential tenancy at the Property. The matter called for a case management discussion at 2pm on 7 March 2018. The Applicant was not present in person, but was represented by Ms Barclay of Happy Lets Ltd.. The Respondent was not present or represented.

- Findings in Fact

1. The Respondent rents the Property from the Applicant in terms of a private residential tenancy, with a start date of 2 July 2018 ('the tenancy agreement'). On 12 November 2018, a notice to leave was sent to the Respondent by the Applicant's agents, stating, "You have breached a term(s) of your tenancy agreement," as the sole ground upon which he intended to seek an order for eviction.

2. The Respondent has not breached any term of the tenancy agreement, apart from the term under which she is required to pay rent.

- Reasons for Decision

3. In terms of s.52(5) of the Act, the Tribunal may not consider whether an eviction ground applies unless it has been stated in the notice to leave accompanying the application, or permission has been given to include it in the application by the Tribunal. No permission to include additional grounds had been granted, so the Tribunal was restricted to consideration of whether the ground stated at paragraph 11 of Schedule 3 to the Act, "Breach of tenancy agreement," applied.

4. While the Applicant was able to provide evidence of the tenant not having paid rent, it was clear that the Respondent had not breached any other term of the tenancy. Paragraph 11 of Schedule 3 to the Act states, in effect, that the ground, "Breach of tenancy agreement," cannot be found to apply if the only term of the tenancy that has not been complied with is that requiring payment of rent. This ground does not therefore apply.

5. Since the Applicant had not shown that the ground for an eviction order relied upon applied, the application was refused.

- Decision

Application refused.

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.

N. Young

Legal Member/Chair

7 MARCH 2019

Date