

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/18/2319

Re: Property at 43 Woodburn Road, Dalkeith, Midlothian, EH22 2AU (“the Property”)

Parties:

Slash Property Ltd, c/o Neil Reid Property, 15 Hardengreen Business Park, Eskbank, Dalkeith, Midlothian, EH22 3NX (“the Applicant”)

Miss Nicky Cameron, Mr Jason Tully, 43 Woodburn Road, Dalkeith, Midlothian, EH22 2AU (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be made under Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016

- **Background**

By application dated 31 August 2018 and received by the tribunal on the same date the applicant’s representative sought an eviction order under Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). Documents received with the application were a copy of a Notice to Leave, a copy Section 11 Notice, Copy Rent Statement, Copy texts between parties and copy email correspondence between parties. The tribunal wrote to the applicant’s representative on 19 September asking for a copy of the relevant tenancy agreement and asked for confirmation that the Notice to Leave was served on each tenant and asked for proof of service on each. An email was received from the applicant’s representative dated 20 September 2018 stating ‘I forward the email sent to both tenants (as joint tenancy)

attaching the NTL and associated documentation. Please note for the avoidance of any doubt, the only contact information supplied from the tenants was the email address this was sent to.' A copy private rented tenancy agreement based on the Scottish Government Model Private Residential Tenancy Agreement and dated from 13th April 2018 between Peter Dumbreck ("the Landlord") and Jay Tully and Nicky Cameron was also provided with this email. The case was assigned to a Case Management Discussion today. The respondents had until 28 November 2018 to lodge written representations. No written representations have been received. A further email was received from the applicant's representative on 28 November with further correspondence between the parties and an updated rent statement seeking the sum of £1878.54 made up of rent arrears, late payment charges and admin fees for the tribunal application.

- The Case Management Discussion

The Case Management Discussion took place today. The applicant's representative and the second respondent, Jay Tully, were in attendance. The tribunal went through all the documentation lodged with the application and received subsequently. There was a lengthy discussion about the name of the applicant. On the application the applicant is stated to be "Slash Property Limited" and yet the Landlord is stated to be Peter Dumbreck on the tenancy agreement and on the copy title that the tribunal had in the case papers. The tribunal would not be in a position to issue an order without some link between the Landlord/owner and the Company named as applicant. There was also discussion surrounding the Notice to Leave only being served on one tenant's email address when there were 2 joint tenants. Mr Tully confirmed that Miss Cameron had seen the Notice to Leave and was aware of the eviction action and related rent arrears action. It was also not clear to the tribunal what documents were attached to the emailed Notice to Leave. Both the applicant's representative and the second respondent confirmed that all the email correspondence in relation to the rent arrears had been attached to the Notice to Leave. The up-to-date rent statement was discussed. It included £240 for admin fees in relation to the present tribunal case (and the related rent arrears case) and it also included 4 x £24 as a late payment admin fee as per the tenancy agreement. The rent was £630 per calendar month. Housing benefit on behalf of both tenants had been paid in the sum of £537 per month but the second respondent was supposed to pay the remaining rent monthly. He hadn't paid anything since 1 July 2018. In answer, the first respondent admitted all the rent arrears which he attributed to his own mismanagement of money. He questioned the notice given in the Notice to Leave and whether the notice should have been 28 days from 48 hours after the date of the notice. His preference was to avoid eviction and stay on in the property under an assurance that he would repay the arrears but accepted that he had made many false promises in this regard in the past. The tribunal adjourned to allow the applicant's representative to seek information in relation to the change in ownership of the property and provide evidence of this to the tribunal. The tribunal also wanted time to consider the documents and the issues raised during the Case Management Discussion. On reconvening a copy of the update Land Certificate along with a

Companies House entry showing the Landlord as the sole director of the Company was provided under explanation that then correct Company name was Slash Property Limited. The transfer of property had taken place on or around 3 August 2018 after the Notice to Leave had been served. The first applicant advised he received the Notice to Leave on the date it was dated i.e. 1 August 2018.

- Findings in Fact

The applicant took ownership of the property in question on or about 3 August 2018.

Prior to that the applicant's sole director had been owner and landlord of the property. He had entered into a Private Residential Tenancy with the respondents on 13 April 2018 with agreed rent at £630 per calendar month.

The respondents have been in arrears for more than three consecutive months.

At least one month's rent is still owing.

There has been no delay in payment of any relevant benefits.

The applicant's representative had served a Notice to Leave on 1 August 2018 asking the respondents to leave by 29 August 2018. The first respondent confirmed receipt of this on 1 August 2018.

- Reasons for Decision

Ground 12 of Schedule 3 of the 2016 Act was established. It was therefore mandatory to issue the eviction order, there being no delay in payment of a relevant benefit

- Decision

The tribunal determined to issue an Eviction Order in respect 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons

for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Anne Mathie

Legal Member/Chair

30 November 2018

Date