



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

Chamber Ref: FTS/HPC/EV/23/0153

Re: Property at 30 Cloverleaf Grange, Aberdeen, AB21 9FH (“the Property”)

Parties:

Places For People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr James McCourt, 30 Cloverleaf Grange, Aberdeen, AB21 9FH (“the Respondent”)

Tribunal Members:

David Preston (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted in favour of the applicant.

Background:

1. An application under Rule 109 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) was made on 16 January 2023. The application was based on grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) Act 2016.
2. The application was accompanied by: Private Residential Tenancy dated 24 November 2021; Notice to Leave and Certificate of Service dated 20 February 2022; rent statement covering the period 17 November 2021 to 31 January 2023; pre-action protocol letters and guidance dated 24 November 2022 and 11 January 2023; and Notice to the local Authority under section 11 of the Homelessness etc (Scotland) Act 2004.

3. By Decision dated 3 February 2023 a Legal Member of HPC having delegated power for the purpose, referred the application under Rule 9 of the Regulations to the tribunal. A letter of Intimation with Notice of the Case Management Discussion to be held by teleconference on 3 April 2023 at 10.00 together with the application and case papers was served on the tenant by Sheriff Officers on 1 March 2023. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Intimation thereof.
4. On 2 March 2023 the applicants' representative submitted an updated rent statement for the period from 17 November 2021 to 31 March 2023 showing that no further rent had been paid and the balance outstanding now amounted to £9174.70. That email was copied to the respondent.
5. The tribunal was satisfied that all relevant documents and intimation of today's hearing had been duly served on the respondent and that the requirements of Rule 24 had been complied with.

Case Management Discussion

6. Mr Kenneth Caldwell, Solicitor of Patten & Prentice appeared on behalf of the applicants. There was no appearance by or on behalf of the respondent. The tribunal was satisfied that the respondent had been given due notice of the CMD and had voluntarily elected to waive his right to be present or be represented and was content to proceed in his absence.
7. Mr Caldwell advised that there had been no direct communication from the respondent. His sister had telephoned his office in December 2022 to say that she had been advised that the Notice to Leave was invalid as it had not given six months' notice. She had been told that the notice periods had reverted to the pre-pandemic position, and nothing further had been heard.
8. The tribunal discussed the rent statement with the applicant's agent which demonstrated to the satisfaction of the tribunal that the respondent had paid a total of £764 on 17 and 19 November 2021 at the commencement of the tenancy agreement. No further payments had been made by him.
9. The tribunal noted that the rent had apparently been increased in June 2022, but no paperwork had been produced with the application. After a short adjournment Mr Caldwell email Rent-Increase Notice dated 25 February 2022 which had the effect of increasing the rent from £570 per month to £575.50 per month with effect from 1 June 2022.
10. Mr Caldwell explained that when the tenancy commenced, the respondent had been aged 25 and was self-employed in the construction industry. However, not long thereafter the landlords were advised that the respondent was in prison and were told that the release date would be in June or July 2022. When the Notice to Leave was served on 20 November 2022, the respondent was still in custody.

11. Mr Caldwell submitted that, in the circumstances of this case, there are the respondent had only paid the equivalent of one weeks rent in addition to the deposit since the tenancy had started and that he had been in custody for a substantial period of time during the currency of tenancy, it was reasonable for the tribunal to grant the Order for eviction.
12. Accordingly, as at the date of the application a sum in excess of three consecutive months' rent had accrued prior to the making of the application, and that the current arrears were in excess of one month's rent. It was also satisfied that the cumulative amount of rent arrears exceeds an amount equivalent to 6 months' rent due under the tenancy.
13. The tribunal was satisfied that the respondent had received all relevant paperwork in relation to the CMD and had voluntarily waived his right to appear or be represented at the tribunal.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, to determine the application at the CMD.
15. As at the date of the application (16 January 2023), arrears of rent in excess of three months had accrued. No payments had been made since that date, leaving arrears in excess of a sum equivalent to one month's rent in arrears for a continuous period up to the date of the CMD of three or more consecutive months. Further, the arrears were substantial as defined in paragraph 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by the Cost of Living (Tenant Protection) (Scotland) Act 2022.
16. The tribunal accepted the submissions made on behalf of the applicant that it was reasonable for an order for eviction to be granted in all the circumstances, and there was no information presented to the tribunal to suggest that the arrears of rent were wholly or partly as a consequence of any delay or failure the payment of any relevant benefit.

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.

D. Preston

3 April; 2023