



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/23/1702

Re: Property at 5/13 South Lorne Place, Edinburgh, EH6 8QN (“the Property”)

Parties:

Mr Timothy Daniel Dale, Mrs Elizabeth Drummond Dale, 20 Brunstane Road, Edinburgh, EH15 2QJ (“the Applicant”)

Mr James Andrew Ledingham, Ms Jennifer Jane Mackay, 5/13 South Lorne Place, Edinburgh, EH6 8QN; 20 Whitehead Grove, South Queensferry, EH30 9JW (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicants.

Background

1. An application was received by the Housing and Property Chamber dated 25th May 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 12 of the Private Housing (Tenancies) Act 2016.
2. On 29th July 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 28th August 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 19th August 2023.

3. On 4th August 2023, the Applicant's solicitor emailed the Housing and Property Chamber to amend the application to ground 12A. Attached was a Notice to Leave dated 3rd July 2023, proof of service emails to the Respondents and rent account for the period 1st January 2023 to 1st July 2023 showing the arrears at £5250.
4. On 1st August 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondents by letterbox service. This was evidenced by Certificate of Intimation dated 1st August 2023.
5. On 15th August 2023, the Housing and Property Chamber received an email from a solicitor representing the Second Named Respondent. It stated that she was opposed to the granting of an order against her as she had vacated the Property on or around 28th December 2022. Defences were lodged.
6. On 28th July 2023, the solicitor representing the Second Named Respondent emailed the Housing and Property Chamber advising that the Second Named Respondent was consenting to an order for eviction being granted. The Second Named Respondent had believed that she had terminated the tenancy on or around 28th December 2022 and a new tenancy had been created with the First Named Respondent only. This does not appear to have occurred properly. She withdrew her defences.
7. The case was conjoined with case FTS/HPC/CV/23/1703.

The Case Management Discussion

8. A CMD was held on 28th August 2023 at 10am by teleconferencing. The Applicant was represented by Mrs Claire Mullen, solicitor, TC Young solicitors. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules.
9. The Second Named Respondent had made representations directly prior to the CMD consenting to an eviction order being granted. This was noted by the Tribunal. It was accepted that she had left the Property on 31st December 2022 and entered into a new different tenancy. However, due to a technicality the lease had not been effectively terminated and a new PRT created in the name of the First Respondent only. The Second Named Respondent does not wish to have any legal obligation continuing with the Property as she does not live there and has not done so for several months. The arrears have accrued since she left and she is not a party to the conjoined payment application. The First Named Respondent did not make any representations in advance of the CMD.
10. Mrs Mullen motioned to the Tribunal that ground 12A be considered as per her email of 4th August 2023 which asked for the application to be amended in terms of Rule 13(1)(a). This included an amended Notice to Leave dated 3rd July 2023 and served upon the Respondents by email. This email to amend had been notified in writing upon the Respondents by the Housing and Property Chamber

on 8th August 2023. The Tribunal was satisfied that it was appropriate to amend the application to ground 12A.

11. Mrs Mullen told the Tribunal that there has been no contact from the First Named Respondent. He is 34 years old and in employment. He lives in the Property as a single man. He last contacted the Applicants on 6th March 2023 when he offered to pay £100 per month. This has not been forthcoming. There have been emails, WhatsApp messages, telephone calls and visits to the Property but the First Named Respondent has not responded to any of these communications. The First Named Respondent was contacted regarding entry for a water ingress problem. Access was attempted but failed. However, it was seen that the First Named Respondent accepted delivery of takeaway food but refused to open the door for the repair to be undertaken. The First Named Respondent has no known significant health conditions.
12. The Applicants are both in employment. They have two other properties. However, one is vacant and is needing to be refurbished. There is a reduction in the income from two out of three properties as the First Named Respondent is not paying his rent on this property. The Property is mortgaged. The Applicants have continued financial commitments to the mortgage on the Property, factoring costs and other costs arising from letting the Property. The arrears have accrued to £6000. There is a parking space with the Property which the First Named Respondent is subletting without permission and profiting from. The Second Named Applicant's brother is critically ill in Australia. The Second Named Applicant has flown to be with him. However, due to the ongoing financial pressures that have resulted from this tenancy it is unlikely that the rest of the family would be able to join her should her brother's condition deteriorate.

Findings and reason for decision

13. A Private Rented Tenancy Agreement commenced 26th November 2021.
14. The First Named Respondent has persistently failed to pay the rent charge of £750 per month. The rent payments are due to be paid on 1st day of each month.
15. Arrears accrued to more than six months rent arrears as at the date of the CMD.
16. The arrears sought in the conjoined application are £3750. This has increased from the point of application to £6000 at the point of this CMD.
17. The Second Named Respondent moved out of the Property on or around 28th December 2022. Steps had been taken to terminate this PRT and create a new PRT with the First Named Respondent only. This was not done correctly and the Second Name Respondent remained legally bound to the lease. She consents to an order for eviction being granted.

18. There are no issues of reasonableness to prevent an order for eviction being granted.

Decision

19. The Tribunal found that ground 12A has been established and granted an order in favour of the Applicant.

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.

G Miller

28th August 2023

Legal Member/Chair

Date