



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) Scotland Act 2016 (“The Act”)

Chamber Ref: FTS/HPC/EV/22/1063

Re: Property at Flat 1, 25 Squire Street, Glasgow, G14 0RP (“the Property”)

Parties:

Mr Kristopher Kane, Flat 3/2, 39 Dudley Drive, Glasgow, G12 9RP (“the Applicant”)

Mr Daniel McCann, Flat 1, 25 Squire Street, Glasgow, G14 0RP (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order.

Background

The Applicant seeks an Eviction Order based on Ground 1 and Ground 13 of Schedule 3 of the Act in that it is said that the Applicant wishes to sell the let Property and that the Respondent has allegedly breached certain conditions of the tenancy by smoking in the Property, keeping a dog in the Property and by covering up smoke alarms.

The Application was accompanied by a copy of the tenancy, the notice to leave relied on, and various emails submitted to the Tribunal by both sides. The Applicant also submitted a notice in terms of s11 of the Homelessness (Etc.) (Scotland Act) 2003. The Applicant had also produced correspondence with two separate estate agents indicating the efforts being made to ready the Property for sale.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 8 July 2022. The Application called alongside the related Application regarding a Payment Order with Tribunal reference FTS/HPC/CV/22/104.

The Applicant was personally present and indicated a willingness to proceed. The Respondent was not in attendance. The Tribunal noted the Respondent had previously made an Application to postpone the CMD to allow him to take legal advice. That had been refused on the basis that this was something that would be addressed at the CMD.

The day before today's Tribunal, being 7 July 2022, the Respondent emailed the Tribunal and advised that he was not going to attend as he had wrongly thought the Tribunal was down for 10 July (which is a Sunday) and that he had "*an interview today*".

The email also explicitly stated that the Respondent was happy for the Tribunal to proceed to hear the case in his absence and make a decision based on the emails and documentation before the Tribunal. The Tribunal also noted a previous email sent from the Respondent in which he indicated that he did not wish to contest the Eviction Order sought being granted, albeit in terms of Ground 1 only. The Tribunal did not consider that the Respondent accepted having breached the terms of the tenancy as set out in the Application. The Tribunal noted that the Application and information about how to join the conference call had been properly served on the Respondent by Sheriff Officers on 24 May 2022.

The Tribunal decided to proceed to hear the case in the absence of the Respondent.

Having heard from the Applicant and having considered all the circumstances of the case and the documentation produced, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant and the Respondent entered into a tenancy agreement at the Property which commenced on 25 February 2020;*
- II. *The Applicant was the landlord and the Respondent was the tenant;*
- III. *The Applicant and the Respondent have a difficult relationship and are not on good terms;*
- IV. *The Applicant has become disenchanted with life as a landlord. The Applicant currently himself lives in rented accommodation and has had to incur expensive*

debt to finance the mortgage payments on the Property consequent to the Respondent's failure to make regular payments of rent;

- V. *The Applicant considers being a landlord to have been a toxic experience and confirmed that he never wished to be a private landlord again. The landlord considers that the stress of dealing with what he considers to be a problem tenant and the associated expense, to have derailed his own personal life plans of being able to afford to get married and go on holiday. The Applicant wishes to sell the Property.*

- VI. *The Applicant served a Notice to Leave by email on the Respondent on 4 October 2021. The Notice was in terms of Ground 1 and Ground 13 of Schedule 3 of the Act. The Notice to Leave provided that no Application would be made for an Eviction Order before 7 April 2022. The Tribunal was satisfied that the Notice to Leave was competent in respect of Ground 1, although it did not provide evidence to the Respondent of the alleged breaches of the conditions of the tenancy subsequently referred to in the Application.*

- VII. *The Respondent does not oppose an Eviction Order being granted and the Tribunal considers that it is reasonable that such an order is granted.*

Decision

Having made the above findings in fact, the Tribunal determined that Ground 1 of Schedule 3 of the Act was properly established and that it was reasonable to grant the Eviction Order. Having done so, the Tribunal considered it unnecessary to further consider whether Ground 13 was engaged.

The Applicant sought an award of expenses to be made in his favour. The Tribunal listened carefully to the Applicant and explained the terms of Rule 40 which regulated such matters. The Applicant's position was chiefly that the Respondent had threatened a potential witness to the Application by sending an abusive and threatening text message. The Tribunal considered that whilst the Applicant may construe the Respondent to have acted unreasonably during the tenancy, this should not be conflated with acting unreasonably during the course of the Application before the Tribunal. In that regard the Respondent had declined to attend the CMD (as was his right) and the Application had been granted at the first opportunity. The Tribunal could not consider that any unreasonable behaviour during the tenancy could properly allow the Tribunal to consider making any award of expenses under Rule 40. It was also unclear what those specific expenses might actually be which has to be considered under Rule 40. The Tribunal declined to make any such award of expenses.

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.

A. McLaughlin

08 July 2022

Legal Member/Chair

Date