

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/22/1299

Re: Property at 7, 3/1 Banner Drive, Glasgow, G13 2HW (“the Property”)

Parties:

Mr Robert Pascal, 64 Kidd Place, Charlton, London, SE7 8HF (“the Applicant”) per his agents, Messrs. TC Young Solicitors 7 West George Street Glasgow G2 1BA (“the Applicant’s Agents”)

Mr Samuel McGillivray, 7, 3/1 Banner Drive, Glasgow, G13 2HW (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction Order be granted.

Background

1. By application received on 5 May 2022 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground 4 of Schedule 3 to the Act, that the landlord intends to live in the Property for at least three months. The Application comprised, copy private residential tenancy agreement between the Parties, copy Notice to Leave in the statutory form referring to Ground 3 and giving sufficient notice, copy rent statement showing current rent arrears of £8,500.00 due by the Respondent to the Applicant, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Glasgow City Council, being the relevant local authority and Affidavit by the Applicant evidencing that he intends to reside in the Property as his only or principal home for at least three months

in order to take up employment in the Glasgow area. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 2 August 2022 at 10.00 by telephone conference. The CMD was intimated to the Parties, and in particular, was intimated to the Respondent at the Property by Sheriff Officer on 17 June 2022.

CMD

1. The CMD took place on 2 August 2022 at 10.00 by telephone conference. The Applicant did not take part and was represented by Ms. Kirstie Donnelly of the Applicant's Agents. The Respondent did not take part and was not represented. He did not submit any written representations.
2. Ms. Donnelly confirmed that the intention of the Applicant to reside in the Property remained. She explained that the Applicant intended to work in the Glasgow area and had already had to turn down two job offers because he had no accommodation in the Glasgow area. As he is currently renting in London, he cannot fund obtaining a rental property in Glasgow. Ms. Donnelly confirmed that as set out in the Affidavit, the Applicant had ties to the Glasgow area. She explained that, although not a ground for recovery of possession, the Respondent has rent arrears of £10,500.00 which sum continues to accrue and that no attempt is being made by him to make repayment. and an attempt by a friend of the Applicant to contact the Respondent direct was met with abuse and aggression. With regard to the Respondent's personal circumstances, Ms. Donnelly advised the Tribunal that, as far as she is aware, the Respondent is a single man in his 40s who works as a self-employed electrician and that no dependants live with him.
2. The issue for the Tribunal is to determine if the eviction Ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*" adjourned briefly to consider if the information before it at the CMD was sufficient to make a decision without further procedure. The Tribunal took the view that it had sufficient information and so proceeded to determine the Application.

Findings in Fact

3. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties;
 - ii) The Applicant intends to reside in the Property as his only or principal home for at least three months in order to take up employment in the Glasgow area;
 - iii) The Applicant has a local connection to the Glasgow area;
 - iv) The Applicant cannot fund seeking alternative accommodation in the Glasgow area whilst he has a tenancy in London;
 - v) The Respondent owes rent amounting to £10,500 to the Applicant;
 - vi) The Respondent has employment, an income and no dependants and
 - vii) The Applicant has carried out the statutory processes required by the Act and

Decision and Reasons for Decision

4. The Tribunal had regard to all the information before it and to its Findings in Fact. The Tribunal had regard to the facts that “intent” in legal terms is a firm and unequivocal intention to act and is not a notional intent and that the onus is on the Applicant to establish the Ground. On the information before it, being the Affidavit and the submissions made by Ms. Donnelly at the CMD, the Tribunal determined that the Ground for eviction has been met.
5. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had cognisance of the facts the Respondent has not entered the proceedings and that the Respondent, on the face of it, has no special needs as he has employment, an income and no dependants. The Tribunal had regard to the Respondent’s conduct and the significant level of arrears which he has accrued and continues to accrue, and took the view that, although rent arrears is not a ground on which the Applicant proceeds, the level of arrears is untenable for both Parties and consideration of this conduct assists the Tribunal in reaching a view on reasonableness. The Tribunal was, therefore, satisfied that it is reasonable to issue an eviction order.
6. This Decision is unanimous.

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.

Karen Moore

Legal Member/Chair

2 August 2022

Date