



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/22/1754

Re: Property at 24/5 Woodburn Terrace, Edinburgh, EH10 4SS (“the Property”)

Parties:

Mr Owen Hayward, Glenfari, Park Crescent, Llanfairfechan, Conwy, LL33 0AU (“the Applicant”)

Miss Margarita Herries, 24/5 Woodburn Terrace, Edinburgh, EH10 4SS (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

Tribunal Member:

Karen Kirk (Legal Member) and Elizabeth Currie (Ordinary Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 109 and concerned an Application for an Order for Eviction under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could also be made.

2. Attendance and Representation

The Applicant was present.

The Respondent was not present. The Respondent was served by Sheriff Officer again on 28th October 2022. The Tribunal had sight of the Certificate of Service from the Sheriff Officer.

3. Preliminary Matters

The Tribunal confirmed with the Applicant that they had received the updated rent statements and submissions he had lodged since the last CMD. That CMD was continued on the last occasion because there was no Certificate of Service showing intimation on the Respondent. Sheriff Officers had not provided the certificate and the Respondent had indeed been served on 25th August 2022. However no written representations had been received from the Respondent.

The Respondent was not in attendance again and no contact had been made with the Applicant.

No other preliminary matters were raised.

4. Case Management Discussion

The Applicant sought an Eviction Order against the Respondent on the basis of Ground 12, rent arrears, Schedule 3 of the 2016 Act. . The last payment made to rent was in October 2020. The Applicant said there had been no response from the Respondent for a significant period. he had heard she may be working in the care for the elderly sector but had been a Russian tour guide for tourists in Edinburgh as she is Russian. She was single and he said he had been conscious of covid given her previous occupation and had signposted her using the Scottish government guidance. However she continued not to make payment or seek help.

The Applicant sought an Eviction order as he said he was in an unsustainable situation requiring to pay insurance, landlord registration and roof repairs when he had had no income on the property for over 2 years.

5. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer on two occasions and had not provided any written representations or appeared at the Hearing.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 10th July 2019.**
- 5. A Notice to Leave was sent to the Respondent on 29th November 2021. The Applicant has sent pre action requirement correspondence to the Respondent and a copy of same was lodged.**

6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as rent under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
7. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to £26,650.00. Monthly contractual rent is £950.
8. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
9. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
10. Further the Tribunal was satisfied that the rent arrears were of a substantial nature. No payment to rent had been received since October 2021.
11. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
12. The Tribunal noted the Local Authority under the 2016 Act had been notified.
13. On the evidence available to the Tribunal the Respondent had no dependents residing with her, had been sent pre-action requirement information and had not provided any information directly herself. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
14. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.

K. Kirk

23rd November 2022

Legal Member/Chair

Date