



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 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/1916

Re: Property at 3 Allison Place, Carstairs, ML11 8RQ (“the Property”)

Parties:

Dr Rebecca Brown, 82 Falcon Court, Edinburgh, EH10 4AG (“the Applicant”)

Mr Kieran Jardine, 3 Allison Place, Carstairs, ML11 8RQ (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted.

Background

1. An application was made dated 15 June 2022 in terms of Rule 109 of the Chamber Rules for a Private Residential Eviction Order (this was conjoined with a previous civil application regarding the same Property reference FTS/HPC/CV/22/1375 dated 22 April 2022). Along with the application form, the Applicant lodged the following documents:
 - Copy tenancy agreement
 - Copy rent statement
 - Notice to leave
 - Certificate of Service of Notice to Leave by Sheriff Officers
 - Copy correspondence with tenant regarding rent arrears
2. The Tribunal wrote to the Applicant on 20 June 2022 asking for a copy of the notice given to the local authority as required under section 56(1) of the 2016

Anne Mathie

- Act. The Applicant provided a copy of the section 11 Notice by email on 20 June 2022
3. The application was accepted and assigned to a case management discussion. At the same time a Notice of Direction was issued by the Tribunal asking for proof of service of the section 11 Notice on the local authority and asked for this no later than 14 days before the case management discussion.
 4. The Applicant replied by email dated 4 July 2022 with a copy of an email of 16 June 2022 to the local authority intimating the section 11 notice.
 5. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 6 July 2022. The Respondent was advised that he was required to submit any written representations in response to the application by 27 July 2022.
 6. No written representations have been received from the Respondent.
 7. The Respondent was advised in the correspondence served on him that he was required to attend the teleconference case management discussion and that:

“The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

Case Management Discussion

8. The case management discussion took place today by teleconference. The Applicant attended. There was no attendance by or on behalf of the Respondent.
9. On being questioned about the Respondent's circumstances, the Applicant advised that she had been told by her letting agents that one of the neighbours had said that the Respondent was in the Property every evening but worked during the day. She understood that the Respondent had been in touch with the Letting Agents after he had received the Notice to Leave to say that he couldn't move as he had just started a new job. On being asked about the Letting Agents correspondence with the Respondent and the apparent failure to comply with the terms of the Pre-action Requirements for private residential tenancies, the Applicant was unable to provide any explanation for this or any further information beyond the correspondence in the papers comprising letters from the Letting Agent to the Respondent dated 14 November 2021, 17 December 2021, 17 January 2022, 26 January 2022 and 5 May 2022.
10. The Applicant's circumstances were that she was seeking to obtain a mortgage on the Property but that the Respondent was making it difficult for the valuer to

obtain access to the Property. She wanted the Tribunal to take into account the Respondent's poor rent payment history and lack of communication when considering the reasonableness or otherwise of granting the eviction order.

11. The Applicant confirmed that no further payments of rent had been made since the payment of £250 on 20 April 2022 and the level of rent arrears at the end July 2022 stood at £3000.

Findings in Fact

- The parties entered into a Private Residential Tenancy Agreement in respect of the Property commencing 20 August 2021.
- In respect of said tenancy agreement, the sum of rent due was £450 per calendar month.
- The first payment of rent in August 2021 was paid in full and on time but thereafter the payments became more sporadic. The last full payment of rent was 5 November 2021.
- The rent arrears at the end July 2022 stood at £3000.
- A valid notice to leave was served on the Respondent by Sheriff Officers on 11 May 2022 confirming an application for possession of the Property would not be submitted before 9 June 2022 all in accordance with section 54 of the 2016 Act.

Reasons for Decision

12. The Tribunal took into account the papers before it along with the oral submissions from the Applicant today. There was nothing challenging the information before the Tribunal. The Tribunal required to balance different factors when reaching its decision as to whether it was reasonable to grant the eviction order. The Tribunal was disappointed to note the letting agent's apparent failure to follow the terms of the pre-action requirements despite receiving advice on the same from the Scottish Association of Landlords. However, there was no history of prompt and full payment of rent. The rent had not been paid in full since 5 November 2021. The amount of rent owing at the end July 2022 was £3000. There was an apparent lack of communication on the part of the tenant and the Landlord's desire to mortgage the Property was being hindered by the Respondent refusing access to the Property.
13. In all the circumstances it was reasonable to grant the eviction order in terms of ground 12 contained in paragraph 12 of schedule 3 of the 2016 Act.

Decision

14. That the order for repossession of the Property be granted.

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. Mathie

Legal Member/Chair

Date: 12 August 2022