



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

Chamber Ref: FTS/HPC/EV/23/1566

Re: Property at 23 Mossgiel Crescent, Dundee, DD4 8AR (“the Property”)

Parties:

Mr Michael Tippett, 50 Butters Place, Dundee, DD2 4PH (“the Applicant”)

Ms Theresa Lewis, 23 Mossgiel Crescent, Dundee, DD4 8AR (“the Respondent”)

Tribunal Members:

George Clark (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 application should be decided without a Hearing and made an Eviction Order against the Respondent.

Background

1. By application, dated 12 May 2023 and revised on 4 July 2023, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, The Ground relied on was Ground 11 of Schedule 3 to the Act, namely that the Tenant has failed to comply with an obligation under the tenancy.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 1 June 2018, naming the Respondent as sole tenant. Clause 13 of the Agreement states that “The Tenant must not allow the Let Property to become overcrowded”. The Applicant also provided a copy of a Notice to Leave dated 17 March 2023 and proof of delivery. The Notice stated that no application would be made to the Tribunal before 17 April 2023 and that the Ground being relied on was Ground 11.

3. On 23 August 2023, the Tribunal advised the parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 13 September 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 2 October 2023. The Applicant was represented by Mr Darren Bell, Trainee solicitor, MML Law, Dundee. The Respondent was not present or represented.
5. The Applicant's representative told the Tribunal that the Respondent had admitted that there are six people living in the Property. This is a breach of the tenancy agreement. This means that the Applicant is in breach of the conditions of his insurance policy for the Property and overcrowding is not permitted by his mortgage lenders. Mr Bell submitted that the overcrowding potentially impacts the health and wellbeing of the occupants of the Property and is a health and safety hazard, contrary to fire regulations policy. The Applicant was also now committing a criminal offence, which could result in prosecution if any incident were to occur. This might result in the revocation of his landlord registration. He invited the Tribunal to find that it would be reasonable to make an Eviction Order.

Reasons for Decision

6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
7. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 11 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the tenant has failed to comply with an obligation under the tenancy and that the Tribunal may find that Ground 1 applies if the tenant has failed to comply with a term of the tenancy, and the Tribunal considers it to be reasonable to issue an Eviction Order on account of that fact.
8. The Tribunal noted that the Respondent had not made any written representations and that she had chosen not to appear or to be represented at the Case Management Discussion. As a result, the Tribunal had no information regarding her family situation and as to the ages or gender of any children living in the Property. In the absence of any information to the contrary, the Tribunal concluded that six persons living in a two-bedroom house constituted overcrowding, as defined in Sections 135-137 of the Housing (Scotland) Act 1987.

9. Section 135 provides that a house is overcrowded when the number persons sleeping in it is such as to contravene the Room Standard or the Space Standard. The Room Standard is contravened when the number of persons sleeping in a house and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes (Other than children under the age of 10) who are not living together as husband and wife, sleep in the same room. The Space Standard is contravened when the number of persons sleeping in a house is in excess of the permitted number, having regard to the number and floor area of the rooms of the house available as sleeping accommodation. No account is taken of a child under the age of 1, and a child aged 1 or over but under 10 is reckoned as one-half of a unit. A living room can be included in the number of rooms available as sleeping accommodation.
10. The permitted number of persons in relation to a house with 3 such rooms is 5 and there are further regulations which restrict numbers depending on the floor area of the room in question, the maximum number in a room of any size being 2. A room with a floor area of less than 50 square feet does not constitute a room available as sleeping accommodation.
11. Applying those standards, the Tribunal has no evidence to indicate that the Property is not overcrowded when 6 people are living there. The Tribunal then had to consider whether it would be reasonable on account of that fact to make an Eviction Order. The noted that the Landlord's representative had stated that the property insurance did not permit such overcrowding and that the policy could be invalidated as a result.
12. Having considered all the evidence before it, and in the absence of any representations by or on behalf of the Respondent, The Tribunal decided that Ground 11 had been established and that it would be reasonable to make an Eviction Order. If the Respondent believes that the overcrowding test set out in the 1987 Act has not been met, it is open for her to ask the Tribunal to Review its Decision.
13. The Cost of Living (Tenant Protection) (Scotland) Act 2022 applies to the Tribunal's Decision, as the application was not made before 28 October 2022, the date on which that Act came into force. This means that the Order cannot be enforced for six months, unless Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 expires or is suspended by the Scottish Government.
14. The Tribunal's Decision was 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.



Legal Member/Chair

Date: 2 October 2023