



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/22/2689

Property : 83 Cambusdoon, Kilwinning KA13 6SP (“Property”)

Parties:

Gary David Thomas, 6 Nursery Gardens, Springside (“Applicant”)

Lauren Seaman, 5 Jura Court, Dreghorn KA11 4JG (“Applicant’s Representative”)

William Clark and Elaine Lawson, 83 Cambusdoon, Kilwinning KA13 6SP (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Jane Heppenstall (Ordinary Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined not to make an order for possession of the Property and dismissed the application.

Background

The Applicant sought recovery of possession of the Property. The Applicant’s Representative had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement between the Applicant and the Respondent dated 14 February 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 dated 3 May 2022; royal mail proof of delivery on 5 May 2022; photographs of the external areas around the Property; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with undated email to the local authority and certificate of service certifying service of the Application on the Respondent on 9 February 2023.

The Tribunal issued a Direction to the Parties dated 22 December 2022 (“Direction”). The Parties were directed to respond by the date falling 2 weeks before the case management discussion (“CMD”) to be assigned.

In terms of the Direction the Applicant was required to :

1. Provide a mandate authorising their representative, Ms Lauren Seaman, to represent them in this application.

2. Provide evidence that the S.11 notice was received by the local authority as already asked for or submit a fresh S.11 notice along with evidence of proof of email or posting.
3. Provide any submission on the question of the validity of the Notice to Leave given that more than 28 days notice was given.
4. Provide any further evidence the Applicant wishes to rely on regarding any breach of the tenancy and why it would be reasonable for the Tribunal to grant any order for possession on the grounds sought.

In terms of the Direction the Respondent was required to :

5. Provide a written response prior to the CMD or oral submissions at the CMD as to their position on the application and the question of reasonableness.

Neither Party lodged a response to the Direction.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 14 March 2023 by teleconference. There was no appearance by the Applicant, the Applicant’s Representative or the Respondent.

Reasons for the Decision

The Tribunal noted that there had been no response from the Applicant or the Applicant’s Representative to the Direction. In those circumstances nothing had been provided to the Tribunal to confirm that the party making the application had the authority of the Applicant to do so. This presented a fundamental difficulty to the progress of the application. Neither the Applicant or the Applicant’s Representative had attended the CMD to assist the Tribunal by providing an explanation of the authority to act or any other aspect of the application. In the circumstances the Tribunal determined to dismiss the application.

Decision

The Tribunal determined not to grant an order for possession of the Property and dismissed the application.

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.

