



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/23/0877

Re: Property at 113 Merchiston Avenue, Bainsford, Falkirk, FK2 7JX (“the Property”)

Parties:

Mr Augusto Stabile, 64 Blenheim Place, Stenhousemuir, Larbert, FK5 4PT (“the Applicant”)

Mr Federico Sinibaldi and Mrs Giorgia Sinibaldi, previously residing at 113 Merchiston Avenue, Bainsford, Falkirk, FK2 7JZ and whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 113 Merchiston Avenue, Bainsford, Falkirk, FK2 7JZ under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 17 March 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the

Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 10 June 2018, a rent statement to 12 March 2023, a Notice to Leave dated 13 February 2023 with Sheriff Officers Execution of Service dated 14 February 2023, an email to Falkirk Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 dated 16 March 2023.
3. On 3 April 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. The Applicant’s solicitor lodged an application for recovery of arrears on 31 March 2023. Case Management Discussions (“CMDs”) in both actions were assigned to proceed on 5 June 2023 but were discharged as papers were unable to be served on Mrs Sinibaldi in the arrears action. New CMDs were assigned to proceed on 27 July 2023. Intimation on both Respondents by Recorded Delivery Post were returned to the Tribunal administration marked “Return to Sender”. Accordingly, intimation of the CMDs proceeded by way of advertisement on the Tribunal website in terms of Rule 6A of the Regulations. A copy of the Execution of Service was received by the Tribunal.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 27 July 2023 by way of teleconference. Mr John Gildea from John, Jackson and Dick appeared for the Applicant. There was no appearance by or on behalf of either Respondent despite the teleconference starting 5 minutes late to allow the Respondents plenty of time to join. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The CMD was heard with the arrears action under reference FTC/HPC/CV/23/1083.
6. Mr Gildea explained that the Respondents handed back the keys to the Property to the Applicant on 7 June 2023. The house had been cleared. Arrears were £2700. The Tribunal pointed out that that was the arrears figure when the application was lodged and queried the arrears as at the date the Respondents left the Property. Mr Gildea advised the Applicant was only seeking £2700 as the tenancy deposit would hopefully pay off the further arrears. When questioned by the Tribunal as to whether the Applicant had complied with the pre action requirements, Mr Gildea advised he had no information on whether they had been complied with. On being further questioned by the Tribunal he advised that the Applicant had no idea why payments had stopped. He understood Mr Sinibaldi was working.

Reasons for Decision

7. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
8. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (three months rent arrears).
9. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
10. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 is 28 days.
11. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondents are in three months' rent arrears. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 15 March 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondents on 14 February 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
12. The Tribunal considered the issues set out in the application together with the documents lodged in support, including the tenancy agreement, rent statement, Notice to Leave and the notice in terms of the Homelessness etc (Scotland) Act 2023 served on Falkirk Council. Further the Tribunal considered the submissions made by Mr Gildea. The Respondents had handed back the keys to the Applicant leaving rent arrears of at least £2700. The monthly rent was £450. There were no benefits issues as Mr Sinibaldi worked. Although there was no evidence before the Tribunal that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, the Tribunal was nevertheless satisfied that as the Respondents had left the Property it was reasonable to evict.

13. In the circumstances the Tribunal considered Ground 12 of Schedule 3 of the 2016 Act had been established and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

14. The Tribunal granted an order for repossession. The decision of the Tribunal 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.

Shirley Evans

30 July 2023

Legal Chair

Date