

Housing and Property Chamber
First-tier Tribunal for Scotland



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 Act”) and in terms of the Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/EV/19/3298

Re: Property at 5/12 Western Harbour Way, Edinburgh, EH6 6LP (“the Property”)

Parties:

Mr Kenneth West, 61 Craiglockhart Road North, Edinburgh, EH14 1BS (“the Applicant”)

Ms Jane-Marie Cochrane or Wright, 5/12 Western Harbour Way, Edinburgh, EH6 6LP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of both parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be refused.

Background

1. This case is an action for eviction under Section 51 of the Act. It called for a Case Management Discussion (“CMD”) on 22 January 2020. At that CMD the Applicant was represented by Mr McIntosh from Mattac Legal. There was no appearance by or on behalf of the Respondent. However the Respondent sent the Tribunal an email explaining that she could not attend the CMD due to personal reasons as set out in the email. Her email also set out her response to the application for eviction in terms of which she denied she was in rent arrears.
2. The Tribunal proceeded with the CMD on 22 January 2020 and having considered matters decided that there was not any evidence before the Tribunal to make sufficient findings in fact to determine the case. It appeared to the Tribunal that the case may turn on credibility. In the circumstances the

Tribunal continued the CMD and issued a Notice of Direction seeking both parties to lodge various documents including banks statements, wage slips, texts and emails. Further the Direction sought the Respondent to provide the names of witnesses to the rent having been allegedly paid in cash to the Applicant.

3. The Direction and the Note from the CMD were issued to both parties on 4 February 2020. In terms of the Direction the parties were asked to comply with the Direction and lodge documents by close of business on 7 February 2020.
4. Also on 4 February 2020 the Tribunal advised both parties that the date of the continued CMD was 9 March 2020 at 11.30am at Riverside House, 2nd floor, 502 Gorgie Road, Edinburgh, EH11 3AF. That time and date was also set out in the final paragraph of the Note of the CMD.
5. On 7 February 2020 Mr McIntosh from Mattac Legal emailed the Tribunal to advise he was withdrawing from acting on behalf of the Applicant.
6. Neither party complied with the Notice of Direction.

Case Management Discussion.

7. Neither party appeared or was represented at the CMD. The Tribunal was satisfied that both parties had received notification from the Tribunal on 4 February 2020 advising them of the time and the date of the continued CMD.
8. The Tribunal considered the application and accompanying papers including an unsigned Private Residential Tenancy Agreement, rent statement and Notice to Leave. The Tribunal also considered the Respondent's email of 22 January 2020. The Tribunal also considered the Notice of Direction and the Note of the CMD.

Findings in Fact

9. The only findings in fact that the Tribunal was able to make followed upon the Applicant's solicitor's submissions at the CMD on 22 January 2020 namely—
 - a. The Respondent had worked for the Applicant at some stage. The dates and details of that employment are not known.
 - b. The Respondent lives in the Property.

Reasons for Decision

10. The Tribunal considered there was insufficient evidence to grant the Application. It was accepted in the CMD on 22 January 2020 by the Applicant's then solicitor that the Application could not proceed under Ground 1 of Schedule 3 of the Act, namely that it was the Landlord's intention to sell the Property. Further it was accepted at the CMD that there was nothing in the

Notice to Leave which gave the Respondent any notice what her breach of the tenancy agreement was under Ground 11 of Schedule 3 of the Act. The Applicant's solicitor accepted that Ground 11 could not be relied upon in relation to rent arrears and that accordingly the only Ground the Application could proceed was on Ground 12 of Schedule 3, being the rent arrears Ground

11. The Tribunal noted that although a rent statement had been lodged that showed monthly rent of £850, the rent shown in Clause 8 of the tenancy agreement was shown as £866 and the Respondent claimed she had paid £950 rent to the Applicant per month. It was not clear to the Tribunal whether the whole or part of that £950 was deducted from her wages by the Applicant as claimed by the Respondent.

12. The Tribunal also noted the rent statement showed arrears had accrued from January 2019. However the Notice to Leave stated that arrears had started *"with the payment which was due to have been received in March 2019"*.

13. In the circumstances the Tribunal had no evidence before it which would allow it to make a finding as to the amount of monthly rent or the amount of arrears if any which were due. In terms of Section 51(1) of the Act there was no evidence before the Tribunal which would enable the Tribunal to find that Ground 12 of Schedule 3 applies and so grant an order for eviction.

Decision

14. The Tribunal determined to refuse the Application in the circumstances.

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

Legal Member/Chair

Date

9 March 2020.