



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/20/1306

Re: Property at 1 Beechmar Grange, South Auchincleck, Westhill, Aberdeenshire, AB32 6YS (“the Property”)

Parties:

Mr Kenneth Marshall, Craigmar Properties, Concraig House, Mains of Concraig, Kingswell, Aberdeen, AB15 8RL (“the Applicant”)

Mr Francis Marrufo, 1 Beechmar Grange, South Auchincleck, Westhill, Aberdeenshire, AB32 6YS (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted against the Respondent

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 for an Eviction Order.

A Case Management Discussion (CMD) took place at 2pm on Wednesday 2 September 2020.

Service of the application and notification of the Case Management Discussion (CMD) was made upon the respondent by Sheriff Officer delivery on 10 August 2020. The Tribunal was satisfied that the respondent had received notice of the application and was aware of the CMD. He had not lodged any representations. He did not participate in the CMD.

The applicant was represented by Julie and Christine Marshall. They are the daughters of the applicant Kenneth Marshall.

The respondent, Francis Marrufo, joined the hearing personally and represented his own interests.

Findings and Reasons

The property is 1 Beechmar Grange South, Auchincleach Farm, Westhill, Aberdeenshire AB32 6YS.

The applicant is Kenneth Marshall. He owns a 52.5% pro indiviso share of the heritable property. His brother Charles Marshall owns a 47.5% pro indiviso share of the heritable property. It is evidenced that he consented to the lease and to these eviction proceedings.

The parties entered into a private residential tenancy which commenced on 1 September 2019. The rent was stipulated at £600 per calendar month.

Notice to leave dated 9 March 2020 was served upon the respondent by recorded delivery post. A post office track and trace receipt evidences that the respondent received this on 10 March 2020. The date which the respondent required to leave the property in accordance with the notice to leave was stipulated as 8 April 2020. The notice to leave is valid and in accordance with Section 62 of the Act.

The grounds relied upon in the notice to leave are twofold. Firstly, ground 11 in relation to his alleged breach of the tenancy agreement – in particular clause 20 of the lease - “respect for others”, and ground 12 in respect of rent arrears.

The application when made was accompanied by a copy of the lease, together with a copy of communications issued to the respondent by the applicant, which includes a photograph of the external of the property.

Additional documentation required to be received from the applicant. This included clarification surrounding the ownership of the property and the consent of Charles Marshall. Also produced was a relevant Section 11 notice. Whilst reference had been made to the notice to leave, no copy had been initially lodged. It was submitted that the original was not copied, but following earlier case management a duplicate copy of the relevant information was allowed to be produced which was thereafter received. The proof of posting and relevant post office receipt has been produced.

The respondent’s alleged breach of the tenancy agreement by the leaving of items of rubbish outside the property does not have merit. There is one photograph of the outside of the property which is in a rural location. There are items of what may be best described as items of builder’s debris outside, but it is not extensive and does not look out of place given the location and character of the property. It is placed in

an organised manner. It does not dilute the enjoyment nor use of any of the neighbouring surrounding properties and is not outwith what may be described as a reasonable use of the property and its external areas. It is not rubbish as envisaged by the terms of the residential tenancy agreement. There is no domestic waste or food waste for example. There are no health and safety issues which arise.

The respondent is however in significant arrears of rent and in breach of his legal obligations under the tenancy agreement. A rent statement has been produced which shows that the last payment of rent was made in December 2019. Several months' rent is now due and outstanding.

The Tribunal relied upon the totality of the documentary evidence which was found to be credible and reliable, and consistent with the submissions made on behalf of the applicant. The Tribunal attached weight to the totality of this evidence.

The respondent did not oppose the eviction on the grounds of rent arrears. He accepted that no rent had been paid by him since December 2019.

The applicant is entitled to recover possession of the property and entitled to an eviction order. The respondent is currently in arrears of rent to the extent of 9 months. This is more than one months' rent. Rent arrears have existed for a continuous period prior to the hearing for more than 3 consecutive months. The Tribunal was satisfied that the respondent's arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The ground relied upon is a mandatory one under Schedule 3, Part 3, ground 12 of the Act.

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.

2 September 2020

Legal Member/Chair

Date