



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/23/3929

Property : 6A Killin Avenue, Law, Dundee DD3 6EB (“Property”)

Parties:

Miriam Rennet, 4 West Park Road, Newport-on-Tay DD6 8NP (“Applicant”)

Lindsays LLP, Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE (“Applicant’s Representative”)

Garry Maxfield, 6A Killin Avenue, Law, Dundee DD3 6EB (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy between the Applicant and the Respondent dated 28 April 2021 which commenced on 7 May 2021; Notice to Leave addressed to the Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 11 July 2023 (“Notice to Leave”) in which the ground for eviction was ground 12 and 12A; email to the Respondent attaching the Notice to Leave dated 11 July 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 7 November 2023 and rent statement. The Tribunal had sight of a certificate of service by sheriff officer evidencing service of the Application on the Respondent on 22 December 2023

Case Management Discussion

A Case Management Discussion took place before the Tribunal on 14 February 2024 by teleconference. The Applicant was in attendance and was represented by Heather Maltman of the Applicant's Representative. There was no appearance by the Respondent.

Ms Maltman told the Tribunal that the rent was now 11 months in arrears. She said that the Respondent seemed to work sporadically. She did not know if he was in receipt of benefits. She said the Applicant had contacted universal credit to obtain a direct payment but this had been refused. She said that the Respondent's daughter, aged 16, lived with the Respondent on occasions.

The Tribunal asked about compliance with the pre-action requirements. The Applicant said that she frequently sent rent statements to the Respondent and he promised to pay or leave the Property but did neither. She said that she sourced template letters containing signposting to relevant agencies and sent letters in that format to the Respondent in June 2023. She said the Respondent was meant to pay the rent by standing order but never set one up. She said she gave him every opportunity to pay. She said that she would have taken steps sooner against the Respondent but he told her he was to receive an inheritance which he would use to pay a lump sum. She said this turned out to be incorrect.

The Applicant told the Tribunal that at the time of letting the Property to the Respondent he was employed as a gas fitter. She said that she let the Property via an agency. She said she still had a mortgage on the Property and in addition was paying for gas and insurance. She said she had not had access since March 2023. She said she hoped to let the Property again, depending on its condition.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement dated 28 April 2021 which commenced on 7 May 2021 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 11 July 2023.
3. At the date of service of the Notice to Leave the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 7 November 2023.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act. In terms of section 51 of the Act, the First-tier Tribunal may 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 applies. In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 and 12A. Ground 12 is that the tenant has been in rent arrears for 3 or more consecutive months. Ground 12A states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*
- (2) *The First-tier Tribunal may find that the ground named in paragraph 1 applies if –*
 - (a) *the tenant has accrued rent arrears under the tenancy agreement in respect of one or more periods,*
 - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy agreement when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) *the tribunal is satisfied that it is reasonable to issue an eviction order*

The Tribunal considered the statement of rent arrears provided and determined that the grounds for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant and the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.



Date : 14 February 2024

