



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/19/0990**

**Re: 13D Queen Street, Paisley, PA1 2TT ("the Property")**

**Parties:**

**PAR Residential Investments III LP, c/o, Cappel Properties, 1-3, Huntington Place, Annandale Place, Edinburgh, EH7 4AT ("the Applicant")**

**Cairn Estate and Letting Agents, 34 Gibson Street, Glasgow, G12 8NX ('The Applicant's Representative')**

**Robert Tomlinson, 13D Queen Street, Paisley, PA12TT ("the Respondent")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Member: Jacqui Taylor (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.**

## **1. Background**

1.1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules. The application was dated 27<sup>th</sup> March 2019. The application states that the Tenant is in rent arrears over three consecutive months. The rent arrears at the date the Notice to Leave was served amounted to £2250, relating to October 2018, November 2018, December 2018, January 2019 and February 2019 rents. The Tenant had rent arrears of £2700 at the date of the application.

1.2 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement dated 16<sup>th</sup> April 2018.

- A rent statement for the period 15<sup>th</sup> March 2018 to 1<sup>st</sup> February 2019 which showed the outstanding rent to be £2250.
- Notice to Leave dated 19<sup>th</sup> February 2019 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 25<sup>th</sup> March 2019.
- The Certificate of Execution of Notice to Leave by James Smith, Sheriff Officer, dated 21<sup>st</sup> February 2019
- Section 11 Notice addressed to Renfrewshire Council.

## **2. Case Management Discussion**

This case called for a Case management Discussion (CMD) at on 31<sup>st</sup> May 2019. The CMD was adjourned to enable the Applicant to:-

- (i) Lodge an application to amend the reference to Ground 17 in the application to Ground 12.
- (ii) Check whether the Respondent had vacated the Property.
- (iii) If the Respondent remained in occupation, and an eviction order was still required, to lodge a full copy of the Notice to Leave together with evidence that the full Notice was sent to and served on the Respondent.

## **3. Notice to Leave**

Gemma McFarlane, the Applicant's representative, sent the Tribunal a copy of the complete Notice to Leave and relative Certificate of Execution of Service on 4<sup>th</sup> June 2019.

## **4. Adjourned Case Management Discussion**

4.1 This case called for an Adjourned Case management Discussion (Adjourned CMD) at 14.00 on 28<sup>th</sup> June 2019.

The Applicant did not attend the CMD but their representative, Gemma McFarlane, of Cairn Estate and Letting Agents attended on their behalf.

The Respondent did not attend in the CMD.

The Respondent had been served with notice of the CMD by Sheriff Officer on 7<sup>th</sup> June 2019.

No written responses had been received from the Respondent.

### **4.2 The Tribunal identified with the applicant's representative the following agreed facts:**

4.2.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 16<sup>th</sup> April 2018.

4.2.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.2.3 The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicant's title deeds being Land Certificate REN120587. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 6<sup>th</sup> October 2017.

4.2.4 The rent due in terms of the tenancy was £450 per month.

4.2.5 The outstanding rent as at 19<sup>th</sup> February 2019 amounted to £2250 relating to rents due in October, November and December 2018 and January and February 2019. An Order for payment of arrears of rent had been previously issued in respect of case number (CV/19/0991) on 31<sup>st</sup> May 2019.

4.2.6 Notice to Leave had been served on the Respondent by Sheriff Officer on 21<sup>st</sup> February 2019. The Notice to leave was dated 19<sup>th</sup> February 2019 and it stated that the Applicant intends to apply to the Tribunal for an eviction order on the ground that he is in rent arrears over three consecutive months and that an application would not be submitted to the Tribunal before 25<sup>th</sup> March 2019.

### **5.3. Oral Evidence**

Gemma McFarlane advised the Tribunal that:-

5.3.1 She believes that the Tenant has vacated the Property.

5.3.2 The Respondent has made no further rent payments.

5.3.3. The Applicant had applied to the Tribunal for a payment order in respect of the arrears of rent and that had been granted on 31<sup>st</sup> May 2019 in the sum of £2700 (CV/19/0991).

5.3.3 She had no reason to believe that the rent arrears was due to a delay or failure in the payment of housing benefit. She had received no requests for information in respect of any Housing Benefit application made by the Tenant.

### **6. Requirements of Section 109 of the Procedure Rules.**

**(a)** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The ground stated in the application was that the Tenant is in rent arrears over three consecutive months. Rent has been in arrears since October 2018. The application also stated that this was Ground 17. The Applicants had made an application to amend the application to refer to Ground 12, instead of Ground 17, in the email to the Tribunal Administration dated 7<sup>th</sup> June 2019.

The Tribunal accepted that Applicants' application to amend the application to state Ground 12 as the narrative of Ground 12 had been detailed in the original application, albeit that it had wrongly been named Ground 17.

**(b)** The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The said rent statement had been produced.

(ii) a copy of the notice to leave given given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 19<sup>th</sup> February 2019 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 25<sup>th</sup> March 2019.

The Tenancy commenced on 16<sup>th</sup> April 2018. As at 19<sup>th</sup> February 2019 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on the fault ground 12 of Schedule 3 of the 2016 Act and therefore 28 days notice was required.

In terms of section 54(2) of the 2016 Act the period of Notice begins on the day the Tenant received the Notice (21<sup>st</sup> February 2019) and expires on the day falling 28 days after it begins. The date it expired was 21<sup>st</sup> March 2019. The Notice to Leave correctly gave the Tenants a minimum of the required 28 days notice.

The Certificate of Execution of Notice to Leave by James Smith, Sheriff Officer, dated 21<sup>st</sup> February 2019 had been produced to the Tribunal which confirmed that the Notice to Leave had been served on the Respondent by depositing it through the letter box of 13D Queen Street, Paisley, PA1 2TT on 21<sup>st</sup> February 2019.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided, together with a copy of email to Renfrewshire Council sending them the Notice.

**(c)** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

## **7. Decision**

The Tribunal found that the Applicant had met the requirements of Ground 12(2) of Schedule 3 The Private Residential Tenancies (Scotland) Act 2016 for the following reasons:

7.1 The outstanding rent due by the Respondent at the date of the CMD was £2700 being more than one months rent.

7.2 The last rent payment had been made on 1<sup>st</sup> November 2018, consequently the Respondent had been in arrears of rent for a continuous period of three or more consecutive months.

7.3 The Tribunal accepted the evidence of Gemma McFarlane to the effect that the rent arrears was not due to a delay or failure in paying a relevant benefit.

Consequently the Tribunal determined that the order for possession of the Property be granted.

### **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.

# Jacqui Taylor

28<sup>th</sup> June 2019

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Legal Member