



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/19/1475

Re: Property at 31 Overton Road, Kirkcaldy, KY1 2DX (“the Property”)

Parties:

Ms Margaret Dick, Nemphlar Muirhead Quarry, Cardenden, Lochgelly, KY5 0AU (“the Applicant”)

Mr Stuart David Kay, Mrs Lynn Kay, 31 Overton Road, Kirkcaldy, KY1 2DX (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondents for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service on each tenant
 - a copy section 11 Notice for each tenant
 - a copy of the Respondents rental statement
 - email from the Respondents

3. The Applicants' local agent Mr Christie, from Messrs Ross & Connell appeared for principal agents Messrs Gilson Gray on behalf of the Applicant. There was no appearance by the Respondents.
4. Notice of the Hearing and the application had been served on the Respondents by sheriff officers on 29 May 2019. As I was satisfied that the Respondents had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in their absence.

Hearing

5. The Applicants' representative referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notices to leave and evidence of service of them, the email from the Respondents and rent account statement. He confirmed that the notices to leave had been served by sheriff officer on 9 April 2019. He advised that he considered that the Respondents were aware of the notices given the terms of the email which had been sent to the Applicant in May when the Respondents advised that they had not received the eviction notice from the sheriff court, that they knew their rights and would not vacate the property until they received the court order.
6. He advised that each notice to leave sought eviction under Ground 12, rent arrears for a period of more than 3 months.
7. He advised that the current level of arrears were £3840. He advised that when the application was made to the Tribunal the arrears were £2880 and that there had been arrears on the rent account for a period exceeding three consecutive months.
8. He did not consider that the arrears were due in part or wholly due to a delay in the payment of relevant benefits. He advised that there was no indication given of any outstanding claim for benefits having been made by the Respondents. He also noted that previous payments had been bank payments and there had been no benefit payments at any time.
9. The Applicants' representative advised that the Respondents were in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and he did not consider that there were outstanding benefits issues causing the arrears.
10. He advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

11. The Tribunal found the following facts established:-

12. There existed a private residential tenancy between the Applicant and the Respondents. It had commenced on 1 July 2018.
13. The tenancy was for the Property 31 Overton Road, Kirkcaldy.
14. The tenants are Stuart David Kay and Lynn Kay.
15. The landlord is Margaret Dick.
16. Clause 7 of the Tenancy Agreement provides that the rent for the property is £480 per calendar month. It is payable in advance and due on the 1st of each month.
17. There was a notice to leave addressed to each Respondent. It contained information for the Respondents as to why an eviction order was sought. It was dated 8 April 2019. It confirmed that proceedings would not be brought until 8 May 2019. It had been served on each Respondent by sheriff officers on 9 April 2019. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
18. That rent arrears had been outstanding since 1 November 2018.
19. There were rent arrears outstanding at the date of the application, 16 May 2019, which totalled at least one month's rental due under the tenancy.
20. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
21. The arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
22. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

23. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
24. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
25. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
26. Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the

tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

27. I found that the terms of sub-paragraph 2 were met and accordingly, I consider that I must find that the ground in sub paragraph 1 applies; I have found the other statutory requirements to have been complied with; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

28. The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

Legal Member/Chair

11/7/19

Date