

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2043

Re: Property at 1 Beck Avenue, Ryedale Meadows, Troqueer, Dumfries, DG2 7BJ (“the Property”)

Parties:

Thornwood Homes, Thornwood Homes, 2 Rigghead Cottages, Glencaple Road, Dumfries, DG1 4TU (“the Applicant”)

Ms Eleanor McTaggart, 1 Beck Avenue, Ryedale Meadows, Troqueer, Dumfries, DG2 7BJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 2 July 2019, The Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Eviction Ground relied on was Ground 12 of Schedule 3 to the 2016 Act.

The application was accompanied by copies of a Tenancy Agreement between the Parties commencing on 26 October 2018 at a monthly rent of £630, a Rent Statement showing arrears as at 26 June 2019 of £3,150, and a Notice to Leave, dated 24 May 2019, advising the Respondent of the Ground being relied on and that no application would be made to the Tribunal before 24 June 2019, with evidence of service of the Notice to Leave. The Tenancy Agreement purported to be a Short Assured Tenancy Agreement.

On 23 August 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written

representations by 15 September 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Lochvale House, Georgetown Road, Dumfries, on the afternoon of 1 October 2019. The Applicant was represented by Mr Adam Turnbull of Gillespie Gifford & Brown LLP, solicitors, Dumfries. The Respondent was not present or represented. The Applicant's representative advised the Tribunal that no rental payments had been received since the date of the application and asked the Tribunal to make an Eviction Order without a Hearing.

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to 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 to the 2016 Act applies. Ground 12 of Schedule 3 to the 2016 Act provides that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal must find that Ground 12 applies if at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal noted that the Tenancy Agreement purported to be a Short Assured Tenancy Agreement, but held that it was a Private Residential Tenancy, as it commenced after 1 December 2017.

The Tribunal was satisfied from the evidence before it that, as at the date of the Case Management Discussion, the rent was more than one month in arrears and that the Respondent had been in arrears of rent for a continuous period up to that date of more than three months. There was no evidence to suggest that the arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 of Schedule 3 to the 2016 Act had been met and the Tribunal was bound to issue an Eviction Order.

Decision

The Tribunal determined that the application should be granted without a Hearing and issued an Eviction Order against the Respondent.

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.

George Clark

Legal Member/Chair

1 October 2019

Date