



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/19/3649

Re: Property at 11 Townhead Street, Hamilton, ML3 7BQ (“the Property”)

Parties:

Mr Shakil Ahmed, c/o 23 Townhead Street, Hamilton, ML3 7BQ (“the Applicant”)

Miss Maria Ann Kenny, Mr Keven Morton Scott, 11 Townhead Street, Hamilton, ML3 7BQ (“the Respondent”)

Tribunal Members:

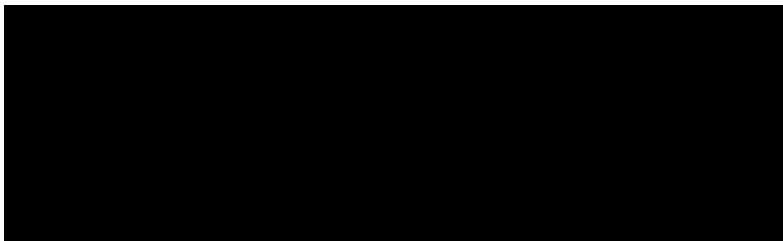
Lesley Ward (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the respondents from the applicant’s property at 11 Townhead Street Hamilton, be made in terms of ground 12 of schedule 3 of the Act, on the basis that that the respondents are in arrears in excess of one month’s rent and have been for more than 3 months.

1. This was a case management discussion ‘CMD’ regarding an application to for eviction terms of s52 of the Private Housing)(Tenancies) (Scotland) Act 2016, ‘the Act’ and rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017, ‘the rules’.

2. The tribunal had before it the following copy documents:



- Application dated 8 November 2019 and received by the Tribunal on 12 November 2019.
 - Private residential tenancy 'PRT' agreement between the parties dated 15 October 2018.
 - Rent statement with rent arrears as at 2 September 2019 of £1849.95.
 - Rent statement with rent arrears as at 5 December 2019 of £2100.03.
 - Land certificate.
 - Sheriff Officer's execution of service of the application on the respondents dated 6 January 2020.
 - Notice to leave dated 5 July 2019.
 - S11 notice to local authority.
 - 2 certificates of posting dated 10 July 2019.
 - Track and trace signed for by 'Scott' dated 11 July 2019.
 - Covering letter to notice to leave dated 5 July 2019.
3. The applicant was represented at the CMD by Mr Coyle solicitor. The respondents did not attend and were not represented. The tribunal had sight of the sheriff officer's execution of service referred to above and was satisfied that the respondents had received notice in terms of rule 24. The tribunal proceeded with the CMD in terms of rule 29.

4. Preliminary matters

- (1) The tribunal noted that the notice to leave was dated 5 July 2019 but was not posted until the 10 July 2019. The notice to leave stated that an eviction order would not be granted until 10 August 2019. Leaving aside the fact that the notice to leave was dated 5 July 2019, since it was posted on 10 July 2019 it appeared to the tribunal that 31 days added to 10 July 2019 takes you to 10 August 2019, the date on the notice to leave, the correct 31 period. It appeared that the date on the notice to leave of 5 July 2019 was an error. This also appeared to the tribunal to be a minor error given that the correct notification period was given in terms of 54 and 62 of the Act. The tribunal considered this was a minor error which, in terms of s73 of the Act does not materially affect the effect of the notice to leave. The tribunal was satisfied that the notice to leave was valid and went on to consider the other preliminary matters.
- (2) The tribunal sought clarification regarding the service of the notice to leave. Mr Coyle advised that two notices to leave were served by recorded delivery and first class post. Both referred to the 2 respondents. One had been signed for and the other hadn't. The tribunal noted that the PRT provided for service personally or by recorded delivery. Given that one of the notices to leave had been signed for by one of the joint tenants the tribunal accepted that the notice to leave had been validly served.

- (3) The tribunal sought clarification regarding the rent arrears on the notice to leave. The notice to leave referred to 3 months arrears of £1350 but the rent statement referred to arrears of around £1649.97 in July 2019. Mr Coyle explained that at the time the notice to leave was served his clients had given details of rent arrears of at least 3 months and the rent statement was provided later. The tribunal was satisfied that ground 12 appeared to be made out on the notice to leave.
5. Having resolved the preliminary matters the tribunal went on to consider the application. Mr Coyle was seeking an order for eviction today on the basis that the rent arrears are continuing to accrue and as at the date of the notice to leave and as at today's date there are rent arrears in excess of one month and they have been outstanding for more than 3 months in terms of ground 12. The tribunal was satisfied that the ground 12 appeared to be met on the basis of the rent schedule lodged.
6. In terms of ground 12, the tribunal is required to be satisfied that the arrears of rent are not wholly or partly a consequence of a delay or failure in payment of a relevant benefit. The tribunal noted that according to the rent schedule lodged, the respondents are in receipt of housing benefit and have been since April 2019. Mr Coyle advised that his instructions are that the respondents were not entitled to housing benefit at the point the PRT was signed. They have been in receipt of £350 per month housing benefit since April 2019 and there is a short fall of around £100 or rent which they are required to pay. They have not made paid the balance of £100 and rent arrears continue to accrue at £100 per month. The respondents have never raised any issue with their housing benefit to the applicant and as far as the applicant is aware, the rent arrears are not due to any delay or failure in payment of housing benefit.

7. Findings in fact.

- The applicant is the owner and landlord of the property.
- The parties entered into a PRT for let of the property on 15 October 2018 with an agreed monthly rent of £450.
- Rent arrears of £2100.03 accrued from December 2018 until 5 December 2019.
- A valid notice to leave was served on 10 July 2019 and at that date there were rent arrears of greater than one month's rental payment for more than 3 consecutive months.
- As at the date of the CMD there continue to be rent arrears of greater than one month's rental payment which have been outstanding for more than 3 consecutive months.

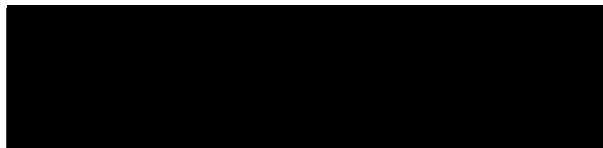
- The rent arrears are not wholly or partly due to a delay or failure in payment of a relevant benefit.

8. Reasons

This was an undefended application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision at the CMD and that the procedure had been fair. The tribunal was satisfied that the eviction ground 12 was met. The tribunal was satisfied that the rent arrears were not wholly or partly due to a failure or delay in payment of a relevant benefit. The tribunal accordingly granted an order for eviction.

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.



Lesley A Ward

Legal Member

3 February 2020

Date