



Decision 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/20/0162

Re: Property at Flat 3/1, 6 Brick Lane, Paisley, PA3 4AE (“the Property”)

Parties:

D & E Properties, Bourtreehill Cottage, Irvine, KA11 3DA (“the Applicant”)

Ms Jacqueline Leckie, Flat 3/1, 6 Brick Lane, Paisley, PA3 4AE (“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 decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 16 January 2020, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Part 3 of Schedule 3 to the 2016 Act, namely that the rent has been in arrears for three or more consecutive months

The application was accompanied by copies of a Private Residential Tenancy Agreement between the parties, commencing on 30 July 2019 at a rent of £450 per month, a Rent Statement showing arrears as at 6 January 2020 of £2,250, with no payments having been made since 30 July 2019, and a Notice to Leave dated 4 December 2019, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order on the ground that the Respondent had been in arrears of rent over three consecutive months and requiring the Respondent to leave the Property by 6 January 2020, with evidence of service by sheriff officer of the Notice to Leave on 6 December 2019.

On 4 February 2020, 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 25 February 2020. The Respondent did not make any written representations to the Tribunal.

The Case Management Discussion scheduled for 14 April 2020 was postponed due to the COVID-19 lockdown restrictions.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 16 July 2020. The Applicant participated in the conference call. The Respondent did not participate and was not represented. The Applicant stated that the Respondent had made no rent payments since the date of the application and asked the Tribunal to grant the Eviction Order without a Hearing.

Reasons for Decision

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 could 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 Act applies.

Ground 12 of part 3 of Schedule 3 to the 2016 Act states 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 over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied that the rent had been in arrears for more than three consecutive months, that there were arrears as at the date of the Case Management Discussion and that no evidence had been provided to suggest that the Respondent's being in arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was, therefore, of the view that the requirements of Ground 12 had been met.

Decision

The Tribunal determined that the application should be decided 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

George Clark

Legal Member/Chair

16 July 2020
Date