



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 of the Housing (Scotland)
Act 2016**

Chamber Ref: FTS/HPC/EV/19/1905

Re: Property at 10 Addiewell Place, Coatbridge, ML5 4DS (“the Property”)

Parties:

Mr James Lambert, C/O JAK Ltd, 33 Kittoch Street, Glasgow, G74 4JW (“the Applicant”)

Ms Gemma Watts, 10 Addiewell Place, Coatbridge, ML5 4DS (“the Respondent”)

Tribunal Members:

Lesley Ward (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.

Background

By application, received by the Tribunal on 19 June 2019, the Applicant sought an Eviction Order 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 Respondent has been in rent arrears for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 1 June 2018 at a rent of £550 per month, a Notice to Leave, dated 15 February 2019, advising the Respondent that no application for an Eviction Order would be made to the Tribunal before 15 March 2019 and a Rent Statement showing arrears as at 27 March 2019 of £3,125.16.

Following a Case Management Discussion on 9 October 2019, the Tribunal issued a Direction, requiring the Applicant to provide by 30 October 2019 an explanation as to why he had lodged a rent ledger dating from 2 August 2017 when the tenancy on

which he was relying commenced in June 2018, an explanation for an apparent discrepancy on the rent ledger which showed rent payments charged totalling £556.24 per month when the contractual rent was £550 and, at least 14 days before the next Case Management Discussion, a rent statement showing clearly the rent due each month, the sums paid and the running balance from the commencement of the tenancy on 1 June 2018.

On 28 October 2019, the Applicant sent an email to the Tribunal, advising that the Respondent had been living in the Property since 2 August 2017 and that, following changes in the Scottish tenancy laws, the Parties had agreed to a new lease, namely a Private Residential Tenancy Agreement. The Respondent was, however, still liable for rent arrears which had arisen since she moved into the Property in August 2017. The apparent discrepancy in respect of rent charges was explained by the fact that the rent under the previous lease had been £556.24, but the Applicant had reduced this to £550 when the Private Residential Tenancy Agreement was signed. The Applicant stated that due to a bookkeeping oversight, this reduction had not been shown from 1 June 2018 onwards, so the amount due by the Respondent should be reduced by £68.64 (£6.24 x 11 months). He provided an amended rent ledger from 1 June 2018, showing that a credit of that amount had been applied. The arrears shown on that ledger as at 9 April 2019 were £3,056.52.

On 6 November 2019, Coatbridge Citizens Advice Bureau, acting on behalf of the Respondent, made written representations to the Tribunal. They provided a copy of a Private Residential Tenancy Agreement between the Parties commencing on 26 May 2019 at a monthly rent of £550. It was signed by the Respondent on 18 June 2019. The Respondent's representative commented that the Notice to Leave relied upon by the Applicant appeared to have been served prior to the provision of the new agreement and that the application to the Tribunal had been made on the same day that the Respondent had signed the latest lease (18 June 2019). They contended that the tenancy agreement dated 1 June 2018 had not been signed by the Respondent until a date at or around February 2019 and that the Applicant could not rely on the legal effect of a Notice to Leave in relation to a tenancy agreement that he chose later to supersede or replace. Even if it was accepted that it was legally competent to do so, the Respondent submitted that the Applicant could not argue that any monies owed for the period prior to the beginning of the new agreement constituted rent arrears in the context of the present proceedings before the Tribunal.

A further Case Management Discussion was held on 13 November 2019. The Tribunal continued consideration of the case to enable the Applicant to consider his position regarding the Notice to Leave and if necessary to take legal advice. The Tribunal was not satisfied that appropriate notice had been given, as, whilst 28 days' notice was required, Section 62(4) of the 2016 Act provides that the date specified as the earliest date on which an application for an Eviction Order can be made should be the day after the expiry of the Notice given in terms of Section 54(2) of the 2016 Act. The view of the Tribunal was that this meant that the Notice to Leave should have specified that proceedings would not be taken to the Tribunal until 16 March 2019, not 15 March as stated in the Notice dated 15 February 2019.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre on the afternoon of 8 January 2019. The Applicant was present. The Respondent was not present or represented. The Applicant advised the Tribunal that the rent arrears currently stood at £1,058.75 and asked the Tribunal to issue an Eviction Order without a Hearing. He told the Tribunal that he had handed the Notice to Leave to the Respondent at the Property about 8.30am on 15 February 2019. The Respondent had made efforts to reduce the arrears and, for so long as she continued to do so, he would not seek to enforce the Eviction Order, but the Respondent had been in the habit of making some payments then falling further into arrears again and he was seeking the Order in case the Respondent did not continue to make payments.

The Applicant also told the Tribunal that the contention on behalf of the Respondent that she had not signed the Private Residential Tenancy on which he was relying until February 2019 was entirely wrong. It had been signed by both parties on 1 June 2018.

Reasons for the Decision

Rule 17 of the First-tier Tribunal 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 decide the application without a Hearing.

The Tribunal noted that the Private Residential Tenancy Agreement on which the Applicant was relying provided for a different rent from the tenancy that preceded it and, on balance, accepted that the tenancy arrangement was not an Assured Tenancy, but was a Private Residential Tenancy. The Tribunal held that the period of notice given in the Notice to Leave complied with the requirements of Section 54 of the 2016 Act in that it commenced on 15 February 2019 (the date on which it was delivered to the Respondent) and expired 28 days later, on 14 March 2019. The Notice stated that an application to the Tribunal would not be made before 15 March 2019, the day falling after the day on which the notice period would expire, so the Notice complied with the terms of Section 62(4) of the 2016 Act.

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 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 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 was more than one month in arrears and that there had been continuous arrears for at least three consecutive months prior to the date of the Tribunal's Decision. No evidence had been led to suggest the arrears were in any way attributable to delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 had been met and the Tribunal was bound to issue an Eviction Order.

Decision

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

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.

G Clark

Legal Member/Chair

8 January 2020

Date