



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/19/1637

Re: Property at 148A High Street, Irvine, KA12 8AH (“the Property”)

Parties:

Ms Ally Ross, 14A Harbour Street, Irvine (“the Applicant”)

Mr Martin Crawford, 148A High Street, Irvine, KA12 8AH (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for the eviction should be granted.

Background

A Hearing took place on 16 September 2019, at that Hearing evidence was heard from both the Applicant’s agent and the Respondent in relation to whether the rent was £400 or £425 per calendar month.

It was identified that a Housing Benefit payment did not appear to be credited to either the Applicant’s rent account or the Respondent’s bank account. If that payment was still due to be paid to the Applicant’s rent account the level of arrears would have meant that the mandatory ground of eviction would not have applied and, granting the Order would be discretionary.

The Tribunal decided to adjourn the Hearing and issued a Direction to the Respondent to obtain written confirmation from North Ayrshire Council confirming to whom that payment had been made.

On 10 October 2019 the Respondent’s representative Mr Meek sent an email to the Tribunal confirming that he had been advised by Housing Benefit that the payment was originally to be paid to the client but was cancelled and paid to the landlord instead on 3 April 2019.

Continued Hearing

The Chairperson introduced everyone and explained the purposes of the Hearing and etiquette involved. The Applicant was represented by Mrs McCallum from Ayrshire Letting. The Respondent was present and was represented by Mr Meek from CHAP.

The Chairperson asked Mrs McCallum if she could produce an up to date rent statement. She did not have one with her but confirmed that the current arrears were £1084.77, and that the Respondent had made a payment of £50 on 27 September 2019.

The Chairperson asked Mr Meek to confirm that the terms of his email meant that the Council had cancelled the payment in question to Mr Crawford and then paid it to the Applicant, but had not shown that on the schedule provided by them, meaning that the payment was not missing. Mr Meek confirmed that was correct.

No one had anything further to add and the Tribunal adjourned to consider its findings.

Findings in Fact

1. The parties entered into a tenancy agreement for the Respondent to rent the property from the Applicant.
2. The tenancy agreement was dated 14 September 2018.
3. The rent was £425 per calendar month as per the tenancy agreement
4. As at the date of the Hearing on 16 September 2019 the arrears were £606.97
5. As at the date of the hearing the rent had been in arrears for three or more consecutive months.

Reasons for Decision

As far as the question of the amount of the rent was concerned the Tribunal felt that they could not look behind the terms of the signed tenancy agreement, which is a legally binding contract.

The application was brought in terms of Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. Said ground is as follows:

Rent arrears

- *12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*
- *(2)The First-tier Tribunal must find that the ground named by 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 payable as one month's rent under the tenancy on that day, and
 - (ii) 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
 - (b) 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.
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) for three or more consecutive months the tenant has been in arrears of rent, and
 - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- (5) For the purposes of this paragraph—
 - (a) references to a relevant benefit are to—
 - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),
 - (ii) a payment on account awarded under regulation 91 of those Regulations,
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

In terms of the ground the Tribunal must grant the Order if the rent has been in arrears for three or more consecutive months, there is at least one month's rent outstanding at the date of the hearing, and the arrears are not caused in whole or in part by a delay or failure in the payment of a relevant benefit. In this case all of these conditions were met and therefore it was mandatory for the Tribunal to grant the 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.

Alison Kelly

Legal Member/Chair

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Date

15/10/19