



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/19/3012

Re: Property at 2/5 Bonnington Avenue, Edinburgh, EH6 5QH (“the Property”)

Parties:

Miss Emma Skoll, Diepenbrock Straat 8, 5151ke, Drunen, Northern Ireland (“the Applicant”)

Miss Maria Isabel Barbosa Humanes, Mr Ian Cruickshank, Mr Adrian Sanchez Rodriguez, 2/5 Bonnington Avenue, Edinburgh, EH6 5QH (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondents in relation to their private residential tenancy at the Property. It called for a case management discussion at 2pm on 29 November 2019. The Applicant was represented by Ms Morrison of TC Young Solicitors. The Respondents were not present or represented.

- Findings in Fact
 1. The Respondents are tenants of the Property, in terms of a private residential tenancy agreement with the Applicant. The start date of the tenancy was 28 September 2018. Rent of £825 per month is due, in terms of the agreement.
 2. A notice to leave was sent to the Respondents on 7 June 2019. It stated that the day the Applicant expected to become entitled to make an application to the Tribunal for an eviction order was 8 July 2019. It identified the ground for

making such an application as Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'). This application was made on 25 September 2019.

3. When the notice to leave was sent, the Respondents owed £1,000 in rent arrears and they had been in arrears since 28 February 2019. As at the start of the day of the case management discussion, the tenants jointly owed £550 in rent. They had not been in arrears for two periods since the sending of the notice: from 14 to 28 October 2019 and 1 to 28 November 2019.

- Reasons for Decision

4. The Tribunal was asked by the Applicant to grant an eviction order on the basis that Ground 12 of Schedule 3 to the Act ('Ground 12') applied. The Tribunal refused that request and refused the application.

5. Ground 12 reads (so far as is relevant):

"12 Rent arrears

(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 subparagraph (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 subparagraph (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."

6. The Applicant's representative invited the Tribunal to find that this ground had been established, because there had been a period of more than three months during which the Respondents had been in arrears. She stated that sub-paragraph (3) had to be read to mean that any period of three consecutive months of arrears, at any stage in the tenancy, could establish the ground, if the Tribunal also found it reasonable to issue an eviction order. This was to be inferred from the fact that there is no mention in that sub-paragraph of the continuous period being, "up to and including that day," as there is in the preceding sub-paragraph.
 7. The Tribunal does not consider that interpretation to be correct. Absent any specific definition, the words of the Act must be given their ordinary meaning. The question, "Have the Respondents been in rent arrears for three or more consecutive months?" in an ordinary context would be taken to refer to the immediately preceding three month period only. That sub-paragraph two makes that point more explicit is a result of the more precisely worded test that it asks the Tribunal to apply, but it does not change how sub-paragraphs (1) and (3) should be interpreted.
 8. That conclusion is strengthened by consideration of the alternative. If any three month period could taken to found Ground 12, it would remove the possibility for a tenant to purge their default and render their tenure fully secure. If the private residential tenancy were intended by the legislature to depart so dramatically from the previous tenancy regimes and the common law rules that preceded them, one would have expected very clear and unambiguous language to be used to do so. No such language has been employed.
 9. Ground 12 does not therefore apply, since the Respondents have not been arrears for three consecutive months, as of the date of the case management discussion. The application should therefore be refused.
- Decision

Application refused.

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.

N.Young

Legal Member/Chair

29 NOVEMBER 2019
Date