

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/0737

Property : 64 Dalgrain Road, Grangemouth, FK3 8HN (“the Property”)

Parties:

KJB Housing Limited, 28 Castle Road, Bathgate, EH48 2UB (“the Applicant”)

Mr David Rae and Mrs Jacqueline Rae, 64 Dalgrain Road, Grangemouth, FK3 8HN (“the Respondents”)

Tribunal Members:

Joan Devine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should not be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 19 December 2017; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (the "Act") dated 16 February 2018 (the "Notice to Leave"); copy email dated 16 February 2018 from the agent for the Applicant to the Respondents attaching the Notice to Leave; Notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 and sheriff officer's execution of service dated 29 June 2018.

A mandate was lodged with the Tribunal signed by Janice Leary, the proprietor of the Property, in which she stated that KGB Housing Limited were authorised to act on her behalf in all issues related to the letting of the Property.

Case Management Discussion

A case management discussion took place before the Tribunal at 2pm on 2 August 2018 at STEP Stirling, Stirling Enterprise Park, John Player Building Stirling FK7 7RP. The Applicant was represented by Steven Rollo of Let Link, agent for the Applicant. David Rae, Respondent appeared on his own behalf. There was no appearance by or on behalf of Jacqueline Rae.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a Private Residential Tenancy Agreement dated 19 December 2017 (the "Tenancy Agreement").
2. The tenancy commenced on 19 December 2017.
3. In terms of clause 4 of the Tenancy Agreement the parties had agreed that all communications which may or must be made under the Act and in relation to the Tenancy Agreement would be made in writing using the email addresses set out in clauses 2,3 or 1.
4. The Notice to Leave was sent by email to the Respondents on 16 February 2018. It stated that an application for an eviction order would not be submitted to the Tribunal before 18 March 2018.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
6. Notice of the date of the hearing had been given to the Respondent on 29 June 2018.
7. The Applicant is authorised to act on behalf of the proprietor of the Property in respect of all matters relating to the letting of the Property.
8. The Respondents did not make a full disclosure of all information sought by the Applicant when signing the tenancy agreement.

Reasons for the Decision

The Tribunal determined not to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier 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.

The Applicant sought recovery of possession of the Property on the basis set out in Ground 11 of schedule 3 of the Act which is a discretionary ground. Ground 11 states:

"(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if –

(a) The tenant has failed to comply with a term of the tenancy, and

(b) The Tribunal considers it is to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent."

The Applicant founded upon the declaration set out at clause 38 of the Tenancy Agreement. Clause 38 states:

"In signing this Agreement and taking entry to the Let Property the Tenant confirms that he or she:

- has made full and true disclosure of all information sought by the Landlord or Letting Agent in connection with the granting of this tenancy
- has not knowingly or carelessly made any false or misleading statements (whether written or oral) which might affect the Landlord's decision to grant the tenancy
- read and understood all of the terms of this Agreement including the accompanying legal commentary "

The Applicant's position was that the Respondents had failed to make a full and true disclosure of all information sought by the Landlord or the Letting Agent in connection with the granting of the tenancy. Mr Rollo explained that the Respondents had completed a reference form online. This resulted in the reference being approved. However, on the date the Respondents took occupation of the Property an anonymous call was received at the reference agency, Let Alliance. On further investigation Let Alliance understood that the call had been from Mr Rae's employer. The caller said that the Respondents had a history of not paying their rent. This call to Let Alliance resulted in the reference being declined. Mr Rollo said that an approach was also made to his office by the landlord of a property occupied by the Respondents at Bridgend Road, Avonbridge. The landlord said that the

Respondents had a history of rent arrears. Mr Rollo said that because the reference had been declined, the Applicant's rent insurance was vitiated. The Applicant sought an order for eviction so that if the rent did fall into arrears, steps could quickly be taken by the Applicant to recover possession of the Property.

Mr Rollo said that the Respondents paid the rent on time. He said that Mr Rae was an excellent tenant.

Mr Rae explained to the Tribunal that he had been living with his mother immediately before he took up the tenancy of the Property. He had lived there for approximately 12 months. Before that he had lived at 24 Wilson Street, Grangemouth. He said that he had a number of difficulties with his landlord at that address including allegations of assault by the landlord on Mrs Rae and Mr Rae's daughter. Mr Rae said that he accepted that he had not made reference to the tenancy of 24 Wilson Street when completing the reference form. He accepted that the declaration made at clause 38 of the tenancy agreement was not accurate. He said that he is in full time employment. He said that he is now separated from his wife. He told the Tribunal that he lives in the Property with his 17 year old daughter who is also working. Mr Rae said that he thought it unlikely that the anonymous call made to Let Alliance was made by his employer.

Ground 11 in schedule 3 to the Act is a discretionary ground. Mr Rollo described Mr Rae as an excellent tenant. There was clearly an unfortunate history between Mr Rae and previous landlords. In all the circumstances the Tribunal determined that it was not reasonable to grant an order for possession of the Property.

Decision

For the foregoing reasons, the Tribunal determined not to grant the Application.

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.

Joan Devine

Joan Devine
Legal Member/Chair

2 August 2018
Date