



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/18/2958

Re: Property at 30 Orchard Court, Dundee, DD4 9DB (“the Property”)

Parties:

Mr Russell Bowen, Mrs Natalie Bowen, C/o EasyLets, 7 South Tay Street, Dundee, DD1 1NU (“the Applicants”)

Mr Liam Henderson, 30 Orchard Court, Dundee, DD4 9DB (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

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

Background:

The application was made on 1 November 2018. The application asked for eviction of the Respondent on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Attached to the application were:

1. the Private Rented Tenancy Agreement for tenancy commencing 11.5.18,
2. copy Notice to Leave dated 7.9.18 with the date on which proceedings could first be raised stated as 1.11.18,
3. Certificate of Service for said Notice to Leave by Sheriff Officers confirming service on the Respondent on 13.9.18,
4. Copy S 11 Notice,
5. statement of arrears up to and including 1.10. 18 for the property showing arrears as at that date of £1,950.

A Case Management Discussion (CMD) was scheduled for 21 January 2019 and both parties advised of the date, time and venue.

Sheriff Officers served on the Respondent the application and notification of the CMD on 3 January 2019 together with the information that any representations should be lodged by 17 January 2019 and that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had received ample notice of the application and the CMD.

The Case Management Discussion

Mr Dymock from EasyLets attended the hearing on behalf of the Applicants. He advised that as of the date of the CMD the arrears had increased to £2,192.23 and that the Respondent had made an offer to pay at £50 per months.

Mr Dymock referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein.

He also produced a statement of arrears updated to date showing as the last transaction date 7.1.19 with an increased amount outstanding of £2,192.23 and stated that as per the date of the CMD this was the actual outstanding arrears amount.

The Tribunal considered whether it could accept the update without this having been lodged by 17 January 2019 as per the letter to both parties.

Ground 12 of Schedule 3 to the Act states:

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

Logically it is necessary for the Tribunal to consider the arrears figure on the relevant date. As this can only be determined on the relevant date it cannot be intimated prior to the relevant date in form of written representations or documentary evidence as by definition this information would not be proof of the amount relevant on the date the Tribunal considers the application on its merits.

The Tribunal was thus satisfied that for this type of application the Applicants must have the opportunity to update the relevant amount on the day and thus allowed the

updated schedule to be received in evidence. Mr Dymock also stated that on Friday the Respondent's legal representatives, Dundee North Law Centre, in response to the Applicants sending the Respondent the schedule lodged with the Tribunal at the hearing, had offered payment of £50 per months to clear the arrears and stated that the arrears were not disputed. Mr Dymock lodged the email exchange. Again for the same reasons as above the Tribunal considered that this could be taken into account as it was information sent by the Respondent's legal representative on his behalf and was not information available to be lodged prior to the CMD. As the information originated from the Respondent it was not information the Respondent was not aware of.

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 11 May 2018 (clause 6) and a monthly rent of £650 payable in advance.**
- 2. From 1.8.2018 to 1.10.2018 no payments were received and the Respondent was in arrears of rent for the amount of £1,950 for non payment of rent on 1.8.18, 1.9.18 and 1.10.18 as per the schedule of arrears lodged with the original application.**
- 3. The Applicants served on the Respondent a Notice to Leave dated 7.9.18. This was served by Sheriff Officers on 13.9.18.**
- 4. It detailed that the ground on which the Applicants intend to apply to the First Tier Tribunal was "You are in rent arrears over three consecutive months" and in part 3 detailed that the rent payments for August and September 18 were already in arrears and the Applicants anticipated further arrears would arise in October 18.**
- 5. In part 4 it stated that an application would not be submitted to the Tribunal before 1.11.18.**
- 6. The Respondent has not made any payments towards the arrears of August to October 18 and only partial payments have been made through relevant benefits since then as set out in the arrears schedule up to 7.1.19.**
- 7. The payments made on 22.11.18 of £454.89, 3.12.18 of £343.40, 10.12.18 of £283.04, 3.1.19 of £343.40 and 7.1.19 of £283.40 did not reduce the arrears.**
- 8. The outstanding amount as of 21 January 2019 is £2,192.23.**
- 9. This constitutes more than one months rent.**
- 10. As at 21 January 2019 the Respondent has been in arrears of rent for the property for over 5 months.**
- 11. Universal Credit payments are in place since 22 November 18.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondent and the Respondent did not attend the CMD.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that rent for the months of August, September and October 2019 remained outstanding as of the date of the CMD. There was no opposition to the application. The Respondent had clearly sought legal advice but had there was no attendance on his behalf at the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent had opted not to participate in the process.

S 51 of the Act states:

Eviction order

51 First-tier Tribunal's power to issue an eviction order

(1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on

the day specified by the Tribunal in the order.

Ground 12 in Schedule 3 of the states

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.

It was not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent was aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application and no representations were made. The Tribunal on the basis of the updated schedule accepted that the arrears on the day were more than one month's rent as the arrears were £2,192.23 and the monthly rent is £650. The payments made by Universal Credit since 22.11.18 did not decrease the arrears and only partially covered the additional rent due. However, the Respondent has not provided any information that would indicate that the arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied on the basis of the evidence that the necessary Notice to Leave had been issued with the correct ground, had been served more than the required 28 days prior to the date stated in Part 4 and that such a Notice to Leave could be served prior to the tenant being in arrears for 3 consecutive months at the date the Notice to Leave is served in anticipation of continued arrears. The Tribunal based this on the wording of Ground 12, which in Ground 12 (2) states "(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". The Tribunal considers the reference to "up to and including that day, of three or more consecutive months" read in conjunction with the requirement of a 28 day minimum notice period for a Notice to Leave sets out that the conditions must be met not at the date the Notice is served but when the Tribunal considers the case on its merits.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act and, taking into account the appeal period, specifies a the day on which the private residential tenancy is brought to an end as 28 February 2019.

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.

P Hennig-McFatridge

Legal Member/Chair

21.1.19

Date