



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/19/0847

Re: Property at 1A 37 Union Street, Larkhall, ML9 1DZ (“the Property”)

Parties:

Mr Gordon Richmond, 17 Braidholm, Giffnock, Glasgow, G46 6HJ (“the Applicant”)

Mr Christopher Anthony Tansey, 1A 37 Union Street, Larkhall, ML9 1DZ (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

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

Background

- 1 The Application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) was made by the Applicants Representative, received by the Tribunal on 13 March 2019.
- 2 A Notice of Acceptance of Application made under Rule 9 of the Rules is dated 21 March 2019.
- 3 The Application seeks recovery of possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016
- 3 A Case Management Discussion (CMD) was scheduled for 8 May 2019 at 2p.m. within Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT. The Parties were written to by letter dated 13 April 2019.
- 4 Intimation on the Respondent was made by Sheriff Officer, mode of service by letterbox, on 16 April 2019.
- 5 Written responses were due to be submitted by the Respondent by 1 May 2019. None were lodged.

The Case Management Discussion

6. A Case Management Discussion (CMD) took place on 8 May 2019 at 2p.m. within Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT when the Applicant's Representative, Ms Kirsty Morrison, was in attendance.
- 3 The Respondent was not in attendance. I was satisfied that proper intimation of all relevant documentation had been made on the Respondent and that he was told that he should attend the CMD. I proceeded with the CMD in his absence, the procedure having been fair.
- 4 The paperwork submitted along with the Application was examined and discussed.
- 5 The Applicant is one of the registered owners of the Property who jointly trade as the firm of H &R. A mandate was produced at the outset giving the Applicant authority to act for both in respect of this Application.
- 6 A Private Residential Tenancy (PRT) was entered into between the Applicant as the Landlord and the Respondent on 25 March 2018. The start date is 24 May 2018.
- 7 The rent is £395 p.c.m. payable in advance from 25 May 2018.
- 8 The PRT states that communications shall be made by e mail.
- 9 A Notice to Leave dated 1 February 2019 was sent to the Respondent by e mail on the same date. It was in the correct format and gave the end of the Notice period as 4 March 2019. I was satisfied that the correct notice period is given.
- 10 The Applicant relies on Ground 12 which states:

SCHEDULE 3 EVICTION GROUNDS

PART 3

TENANT'S CONDUCT

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.

11 Ms Morrison stated that as at the lodging of the Application the rent arrears were £1975. Today they stood at £2765 including the rent due as at 24 April 2019. The last rent paid was on 17 October 2018 of £385. Nothing had been paid since. The information she had been given by those instructing her were that the Respondent was employed as a driver throughout the tenancy. All attempts at contact with the Respondent to resolve the arrears had been ignored. No notification had been made of any change in the Respondent's employment status and there was no reason to believe he had applied for any benefits. She sought an eviction order.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Parties on 25 March 2018 with a start date of 24 May 2018.
- II. The rent is £395 p.c.m. payable in advance from 25 May 2018.
- III. The PRT states that communications between the Parties shall be made by e mail.
- IV. A valid Notice to Leave dated 1 February 2019 was sent to the Respondent by e mail on the same date.
- V. As at the lodging of the Application the rent arrears were £1975. Today they stood at £2765 including the rent due as at 24 April 2019.
- VI. The last rent paid was on 17 October 2018 of £385. Nothing had been paid since.
- VII. The Respondent 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.
- VIII. An Eviction Order is granted on Ground 12 of Chapter 3 of the 2016 Act.

Reasons for Decision & Decision

Section 51 of the 2016 Act states:

(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.

In this Application Ground 12 is relied on-Rent arrears and that the tenant has been in rent arrears for three or more consecutive months.

The First-tier Tribunal must find that the ground 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.

I am so satisfied. Accordingly, I grant the order for eviction.

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.

S Christie

Legal Member

8 May 2019

Date