



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/19/1784

Property: 237 The Moorings, Dalgety Bay, Fife KY11 9GP

Parties:

Ian Oliva, Flat 4, 43 Station Road, Corstorphine, Edinburgh EH12 7AF ("Applicant")

Sneddon Morrison, 156 Station Road, Shotts, Lanarkshire ML7 4AW ("Applicant's Representative")

David Thomson, 237 The Moorings, Dalgety Bay, Fife KY11 9GP ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession should 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 30 August 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 30 April 2019 ("Notice to Leave"); copy email from the Applicant's Representative to the Respondent attaching Notice to Leave dated 1 May 2019; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 5 June 2019; statement showing rent arrears of £1,695 for the period 1 January to 4 April 2019 and sheriff officer's execution of service certifying service of the Application on 2 August 2019.

Case Management Discussion

A case management discussion took place before the Tribunal on 4 September 2019 at Fife Voluntary Action, 16 East Fergus Place, Kircaldy KY1 1XT. The Applicant was in attendance. There was no appearance on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 17 July 2018 ("Tenancy Agreement").
2. In terms of clause 7 of the Tenancy Agreement the Respondent agreed to pay rent at the rate of £565 per month.
3. Rent was outstanding for the period 1 January to 4 April 2019.
4. The Notice to Leave was issued by email on 1 May 2019. It stated that an application for an eviction order would not be submitted to the Tribunal before 31 May 2019. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 5 June 2019.
6. Notice of the date of the case management discussion had been given to the Respondent by sheriff officer on 2 August 2019

Reasons for the Decision

The Tribunal determined 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.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 8 and then narrated that at least 3 months' rent was in arrears. In part 2 of the Notice to Leave the Applicant had stated that the Respondent was in rent arrears over three consecutive months. In part 3 of the Notice to Leave the Applicant had referred to over 3 months rent being in arrears.

The reference to Ground 8 in the Application was erroneous. The reference should have been to Ground 12 of schedule 3 of the Act. Ground 12 states:

"(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."

The Tribunal considered whether the erroneous reference to ground 8 resulted in an invalidity in the Application and determined that it did not.

In terms of Section 50(1) of the Act a tenancy which is a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord. In terms of Section 51 of the Act the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on application by the landlord, it finds one of the eviction grounds named in schedule 3 applies. In terms of Section 52(2) of the Act the Tribunal is not to entertain an application for an eviction order if it is made in breach of sub-section (3). In terms of Section 52(3) of the Act an application for an eviction order against a tenant must be accompanied by a copy of the notice to leave which has been given to the tenant. In terms of Section 52(5) of the Act the Tribunal may not consider whether an eviction ground applies unless it is a ground which (a) is stated in the notice to leave accompanying the landlord's application in accordance with sub-section (3) or (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

In this case the Respondent had received a notice to leave in terms of Section 50 of the Act. The Tribunal determined that an eviction ground named in Schedule 3

applied, namely the Respondent was 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 had been in arrears of rent for a continuous period of 3 or more consecutive months. The Application was accompanied by a copy of the Notice to Leave which had been given to the Tenant. The eviction ground had been specified in Part 2 of the Notice to Leave and further clarification of the eviction ground was given in Part 3 of the Notice to Leave.

The Respondent produced a rental statement which showed that the rent arrears totalled £1,695 which was greater than one month's rent, and that the rent had been in arrears for a continuous period of more than three consecutive months.

Decision

The Tribunal grants an order for possession of the Property.

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.

Joan Devine
Legal Member

4 September 2019

Date