



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Residential (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/0144

Re: Property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP (“the Property”)

Parties:

Mr David Thomson, 17 Newtown Street, Kilsyth, Glasgow, G65 0LY (“the Applicant”)

Ms Emma Beatty (the First Respondent) and Ms Linda Connor (the Second Respondent), 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order for Possession should be granted against the First Respondent only; and refuses to grant the application in respect of the Second Respondent.

Background

1. By application dated 16 January 2020, the applicant landlord, David Thomson, seeks an order for possession of the property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016, on the following grounds:
 1. Ground 11: Tenant has breached a term(s) of the tenancy agreement
 2. Ground 12: Tenant is in rent arrears over three consecutive months.

2. The application is made under rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the rules'). The application complies with the formal requirements of rule 109.
3. The Respondents are Emma Beatty and Linda Connor. They are said in the application to be the tenants of the property.
4. The Applicant lodged the following documents with the application:
 1. Notice to Leave and certificates of citation dated 1 November 2019
 2. Title sheet in respect of the property
 3. Section 11 notices in terms of the Homelessness etc (Scotland) Act 2003
 4. Bank statements for the Applicant
5. The application was originally scheduled to proceed to a CMD on 14 April 2020 but was postponed due to the coronavirus pandemic.

The Case Management Discussion

6. The postponed CMD took place by telephone at 2pm on 17 July 2020 in respect of this application and the conjoined application for civil proceedings (ref CV/20/0143) involving the same parties.
7. The Applicant was represented at the hearing by Mr Onorati, Solicitor, BTO Solicitors on behalf of the Applicant.
8. The Respondents were neither present nor represented.
9. Notice of the postponed hearing was issued to the Respondents by First Class Recorded Delivery on 25 June 2020.
10. The Tribunal was satisfied that the requirements of rule 24(1) had been complied with and accordingly, decided to proceed in the absence of the Respondents in terms of rule 29.

Submissions for the Applicant

11. On behalf of the Applicant, Mr Onorati submitted that the Applicant and the First Respondent entered into a tenancy agreement shortly before 7 January 2019. The Applicant had been approached by the Second Respondent (the First Respondent's mother) explaining that the First Respondent had difficulties with housing. At that time, the Applicant was in a position to offer his property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP ('the property') for let to the First Respondent.
12. The Applicant and the First Respondent entered into a Private Residential Tenancy. The agreement was entered into verbally. When questioned about this from the Tribunal, Mr Onorati submitted that according to the Applicant, the First Respondent had found a model tenancy agreement online, but neither party signed the agreement and neither party have a copy. His position was therefore that the tenancy agreement was a verbal agreement only.
13. The parties agreed that the First Respondent would take entry on or around 7 January 2019 and that rent was payable at the rate of £400 per calendar month.

14. The Second Respondent moved into the property for a time, which explained why the Second Respondent was a party to the action. However, the Second Respondent had since moved out of the property and had not lived there for around three months. The Applicant was fearful that the Second Respondent might move back into the property and therefore, he also sought an order for eviction against the Second Respondent.
15. Mr Onorati moved for the application to be granted on the basis of ground 12 only. He submitted that the eviction sought on ground 11 was on the basis that the tenant had failed to make payment of rent timeously. On further questioning from the Tribunal in relation to the application of ground 11(3) of Schedule 3 to the Act, Mr Onorati confirmed that he no longer sought to apply for eviction under ground 11.
16. He referred to the bank statements lodged on behalf of the Applicant showing that payments had been made by the First Respondent as follows:
 - £400 on 7 February 2019
 - £350 on 15 March 2019
 - £100 on 19 April 2019
 - £50 on 9 June 2019
 - £100 on 10 July 2019.
17. Mr Onorati submitted that the reference in the Schedule of Payments, also lodged in support of the application, to £300 having been received in March 2019 was a typographical error and ought to have read £350.
18. The rent outstanding as at the date the application was made (16 January 2020) was therefore £4,200.
19. Mr Onorati submitted that no further sums had been paid since the date of the application. The rent outstanding for payment as at today's date was in the sum of £6,600.
20. Mr Onorati was not aware of the Respondents having any difficulties making payment of rent on the basis of difficulties with benefits.
21. Mr Onorati submitted that no response had been received from the Respondents to the Notice to Leave or the application made to the Tribunal. On the basis that no defence had been put forward, he moved for the application to be granted in terms of ground 12.
22. Following a short adjournment of the hearing, Mr Onorati lodged an updated Schedule of Payments showing the rent arrears as at the date of the CMD in the sum of £6,600.

Findings in Fact

23. The Tribunal made the following findings in fact:
 - (i) The Applicant is the heritable proprietor of 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP ('the property');
 - (ii) The First Respondent and the Applicant entered into a tenancy agreement on or around 7 January 2019;

- (iii) The First Respondent took possession of the property on or around 7 January 2019;
- (iv) The First Respondent agreed to pay £400 per calendar month by way of rent;
- (v) The First Respondent paid £400 on 7 February 2019;
- (vi) The First Respondent paid £350 on 15 March 2019;
- (vii) The First Respondent paid £100 on 19 April 2019
- (viii) The First Respondent paid £50 on 9 June 2019
- (ix) The First Respondent paid £100 on 10 July 2019
- (x) The First Respondent paid no rent in January 2019
- (xi) The First Respondent has paid no rent to the Applicant since 7 July 2019
- (xii) A Notice to Leave was served on the Respondents on 1 November 2019, on which date the arrears of rent were £3000;
- (xiii) As at the date the Application was lodged with the Tribunal, the First Respondent was in arrears of rent of £4,200;
- (xiv) As at the date of the hearing, the First Respondent was in arrears of rent in the sum of £6,600;
- (xv) The First Respondent continues to reside in the property;
- (xvi) The Second Respondent was not a party to the tenancy agreement;
- (xvii) The Second Respondent no longer resides in the property;
- (xviii) As at the date of the hearing, the First Respondent was in rent arrears greater than the amount payable as one month's rent;
- (xix) As at the date of the hearing, the First Respondent was in rent arrears for a continuous period of one year and five months.

Reasons for Decision

- 24. The Tribunal accepts that the First Respondent and the Applicant entered into a tenancy agreement in terms of which the First Respondent took entry to the property on or around 7 January 2019 and agreed to pay £400 per month by way of rent.
- 25. The tenancy having been entered into after 1 December 2017, the tenancy comprises a Private Residential Tenancy in terms of section 1 of the Act. The tenancy was let to the First Respondent as an individual as a separate dwelling and the First Respondent occupies the property as her only or principal home.
- 26. The Tribunal is not satisfied that the Second Respondent was a party to the tenancy agreement. In any event, the Applicant accepted that, although the Second Respondent had resided in the property with her daughter for a period, she was no longer residing at the property as at the date of the hearing and had not resided there for some time. The Tribunal therefore refuses to grant the application against the Second Respondent.
- 27. The Applicant served a Notice to Leave on the Second Respondent on 1 November 2019. The Notice provided that the grounds for eviction were grounds 11 and 12. The Notice set out in detail the reasons he was seeking eviction, including:

“The Landlord has only received a total of five payments totalling £1,000 since the start of the tenancy agreement. The arrears of rent as at the date of this notice are £3,000. You have been in rent arrears for over three consecutive months.”
- 28. The Notice therefore complied with the requirements of section 52(5). The Notice complied with section 62 of the Act.

29. The Notice also set out the relevant notice period in terms of section 54(2)(b)(i) of the Act (28 days' notice). The notice period expired on 2 December 2019.
30. The Application was lodged with the Tribunal on 16 January 2020. It was therefore lodged after the expiry of the notice period, and within six months from the date of the expiry of the notice period (section 55 of the Act).
31. In terms of paragraph 12 of Schedule 3 to the Act ('ground 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 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.*
32. At the time the Notice to Leave was served and at the date the Application was lodged with the Tribunal, the First Respondent was in arrears of rent amounting to a sum greater than one month's rent, and had also been in rent arrears for more than three consecutive months.
33. On the basis of the bank statements and schedule of non-payment lodged with the application, the Tribunal is also satisfied that the sum of rent arrears outstanding as at the date of the hearing is £6,600, a sum greater than one month's rent. The Respondent has been in rent arrears for a continuous period up to and including the date of the hearing of more than three months.
34. No information is before the Tribunal in relation to the First Respondent's failure to pay being the result of a failure of payment of relevant benefit. Neither Respondent has responded to the Notice to Leave or the application to the Tribunal.
35. The Tribunal therefore has no discretion and finds that ground 12 has been satisfied in respect of the First Respondent only.

Decision

36. The Tribunal therefore grants the Order for Possession against the First Respondent. The Tribunal refuses to grant an Order for Possession against the Second Respondent.

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.

Lesley Johnston

Legal Member/Chair

17 July 2020

Date