



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/22/0126

Re: Property at 115 Stonylee Road, Cumbernauld, G67 2LR (“the Property”)

Parties:

Mr Neagle Cathcart, 2a Westmount Park, Newtonards, BT23 4BP (“the Applicant”)

Mr Sean Bowness, Ms Anne Bowness, 115 Stonylee Road, Cumbernauld, G67 2LR (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 22nd January 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondents, and provided with his application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, rent arrears statement, and various pre-action correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Coronavirus (Scotland) Act 2020 (Eviction*

from *Dwelling-houses*(*Notice Periods*) *Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 11th March 2022, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 27th April 2022 by Tele-Conference. The Applicant did not participate, but was represented by Ms McMullen, solicitor. The Respondents did not participate, nor were they represented. The Respondents had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Ms McMullen confirmed that no further payments had been received from the Respondents since this application was first lodged. Rent arrears at that time were £5,032.43.

The Tribunal was invited by Ms McMullen with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Ms McMullen produced evidence of various attempts to contact the Respondents asking them to make contact with the Applicant in order to discuss options to assist them with their rent arrears.

The notice to leave dated 10th May 2021 relied on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that rent arrears at that time amounted to £2,872.43, accumulated over approximately thirteen months under the private residential tenancy agreement between the parties.

Rental of £485.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. The Respondents had been in arrears of rent for thirteen months as at the date of the notice to leave, and they had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding 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.

The Tribunal was satisfied that ground 12 has been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondents had failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this 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.

Neil Kinnear

27/04/2022

Legal Member/Chair

Date