



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/20/1196

Re: Property at 26A Lynne Drive, Summerston, Glasgow, G23 5AX (“the Property”)

Parties:

Ms Angela Main, 2 Milndavie Road, Strathblane, Glasgow, G62 9EL (“the Applicant”)

Miss Elizabeth Donnelly, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 1 April 2019.
2. The application was dated 23 April 2020 and lodged with the Tribunal on 22 May 2020.
3. The application relied upon a Notice to Leave dated 21 February 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by Sheriff Officers on 25 February 2020 in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule

3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. The body of the notice referred to arrears of £1,440 and referred to an appended rent statement. That rent statement set out irregular rental payments from March 2019 which left arrears amounting to £1,400 by February 2020. The rent due under the PRT is £500 per month due in advance on the 1st of each month. The Notice intimated that an application to the Tribunal would not be made before 27 March 2020.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council on 22 May 2020 was provided with the application.

The Hearing

5. On 7 October 2020, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, I was addressed by the Applicant’s agent, Kirsty Morrison, Accredited Paralegal, of TC Young solicitors.
6. There was no appearance for the Respondent. The Applicant’s agent explained that the Respondent no longer appeared to reside at the Property. (Attempted intimation on 5 August 2020 of an earlier CMD by the Tribunal’s Sheriff Officer was unsuccessful.) Service by Advertisement was granted and undertaken. A Certificate of Service by Advertisement was prepared by the Tribunal’s clerk and provided to me.
7. The Applicant’s agent confirmed that no material contact had been received from the Respondent for some time. The Respondent had not returned keys and still appeared to have belongings at the Property. Unexpectedly, the Respondent had paid £400 towards rent in July 2020 (being the first payment since January 2020). The Applicant’s agent explained that after the payment was received the Applicant had attempted to contact the Respondent by text but the response from the Respondent had been unconstructive, with no confirmation as to the Respondent’s wishes in regard to continued occupation or the intentions behind the £400 payment of rent.
8. I considered the evidence of intimation of the application by advertisement and, on waiting five additional minutes for any appearance, was satisfied to consider the application in the Respondent’s absence.
9. The Applicant’s agent confirmed that the application for eviction was still insisted upon. She provided by email, shortly prior to the CMD, an updated rental statement showing only the payment of £400 in July 2020 since January 2020. With additional rental due at £500 per month, the Applicant’s agent submitted the updated rental statement as evidence of current arrears of £5,000.

Findings in Fact

10. On 29 March 2019, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 1 April 2019 (“the Tenancy”).
11. In terms of clause 4 of the PRT, the parties agreed that hard copy personal service or email could be used for communication of notices in terms of the Tenancy.
12. On 21 February 2020, the Applicant’s agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £1,400.
13. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 27 March 2020.
14. A Sheriff Officer instructed on behalf of the Applicant served a copy of the Notice to Leave to the Respondent on 25 February 2020.
15. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
16. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on the Applicant’s behalf.
17. As of 7 October 2020, the Respondent remained in arrears of rent in the amount of £5,000.
18. The Respondent does not claim to have paid any amount of the arrears remaining as at 7 October 2020.
19. The sum of arrears remaining as of 7 October 2020 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
20. The CMD was competently intimated by the Tribunal upon the Respondent by advertisement.

Reasons for Decision

21. The application was in terms of rule 109, being an order for eviction of a PRT. I was satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
22. Given that the emergency legislation relating to COVID-19 does not apply to a Notice of Leave served on 25 February 2020, ground 12 of Schedule 3 to the 2016 Act is a mandatory ground for the purposes of this application. That ground is mandatory if:

“(1) ...the tenant has been in rent arrears for three or more consecutive months.

“(2)...

(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 arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding.

23. The Respondent has provided no response or denial to the Applicant or Tribunal on these arrears. Given the lack of material communication by the Respondent with the Applicant, her agent, or the Tribunal, there was no information available to me to suggest that the sum of arrears remaining as of 7 October 2020 was in any way a consequence of a delay or failure in the payment of a relevant benefit. I was satisfied to hold that there was no such relevant issue with benefits.
24. In all the circumstances before me, I was satisfied that Ground 12 was well founded by the Applicant.
25. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, I am thus satisfied to grant an order for eviction at this time.

Decision

26. In all the circumstances, I grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that Act.

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.

Joel Conn

7 October 2020

Legal Member/Chair

Date