



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

Chamber Ref: FTS/HPC/EV/20/0002

Re: Property at 13 Crowflats View, Uddingston, Glasgow, G71 5NP (“the Property”)

Parties:

Ms Heidrun Thomsen, 6 Milton Gardens, Uddingston, Glasgow, G71 6EB (“the Applicant”)

Mr Colin McKechnie, Ms Nicola White, 13 Crowflats View, Uddingston, Glasgow, G71 5NP (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 18 December 2019 the Applicant’s representatives Leonards Solicitors, Hamilton, applied to the Tribunal for an order for the eviction of the Respondents under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy, Notice to Leave, Section 11 Notice, Copy Tenancy Agreement and rent reconciliation statement in support of the application.
2. By Notice of Acceptance dated 19 February 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

3. By letter dated 24 February 2020 a Notice of Direction was issued to the parties requiring the Applicant's representatives to submit an outline submission on whether the Tribunal could allow the application to proceed in respect of Ground 12 of Schedule 3 of the 2016 Act when this ground was not included in the Notice to Leave. The Direction also required the Applicant's representatives to submit rent statements and any documentation showing that a request had been made to the Respondents to remove the dogs referred to in the application. The direction also required the Respondents to provide any documentation showing that permission had been granted to them to keep dogs in the property and also any documentation showing any rental payments made since 29 August 2019.
4. By letter dated 16 March 2020 the Applicant's representatives submitted written representations in response to the Tribunal's Notice of Direction.
5. The Respondents did not submit any written representations.
6. A Case management Discussion assigned for 3 April 2020 was adjourned due to the Covid-19 outbreak and a further Case Management discussion was assigned.
7. The applicant's representatives submitted further written submissions prior to a Case Management discussion held by teleconference on 14 July 2020.
8. At the Case Management discussion held on 14 July 2020 the Applicant was represented by her representative Ms turner. The Respondents did not attend and were not represented. The Tribunal heard submissions from the applicant's representative on allowing the application to proceed under both ground 11 and ground 12 of Schedule 3 of the 2016 Act. The Tribunal having considered the applicant's submissions allowed the application to proceed under both grounds in terms of Section 52(5)(b) of the 2016 Act but subject to the Case Management discussion being adjourned to allow intimation to the Respondents of the amended application and for the Tribunal to be addressed on the reasonableness of granting an order for eviction given that the application under ground 12 was being allowed after the coming into effect of the Coronavirus (Scotland) Act 2020.
9. A further Case Management Discussion was assigned to take place on 11 August 2020 by teleconference. Intimation was given to the Respondents by recorded delivery post sent on 23 July 2020.
10. The Applicant's representatives submitted further written representations by email on 5 August 2020.

The Case Management Discussion

11. A Case Management Discussion was held by teleconference on 11 August 2020. The applicant was represented by Ms turner of the Applicant's representatives. The Respondents did not attend and were not represented.

The Tribunal on being satisfied that intimation of the Case Management Discussion had been given to the Respondents determined to proceed in their absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

12. As a preliminary matter the Tribunal heard from Ms Turner in respect of her written submission that consideration of Ground 12 should proceed on the basis that if satisfied that the arrears were outstanding it should be a mandatory ground for eviction as the Notice to Leave had been sent prior to the coming into force of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”) and it was only notices to Leave served after that act came into force that led to ground 12 applications such as this being discretionary. The Tribunal whilst acknowledging that the Notice to Leave pre-dated the coming into force of the 2020 Act the Notice to Leave had not included Ground 12 only Ground 11 and the application was allowed to proceed under Ground 12 only on 14 July which was after the coming into force of the 2020 Act. The Tribunal accepted that the 2020 Act was silent on how an application granted under Section 52(5) should proceed but took the view that it must be implied that in such a case any order for eviction would be discretionary. Ms Turner indicated she was prepared to make a submission on that basis.
13. Ms Turner advised the Tribunal that there were now 11 months rent payments outstanding the last payment being due on 29 July. The total amount due was £6325.00. She said there had been no contact from the Respondents since last year when Mr McKnight had said he would only pay rent if the Respondents were permitted to keep their dogs in the property. Ms Turner went on to say that the Applicant’s letting agents had been able to establish that the Respondents continued to reside in the property. She said they were thought to be in their mid-forties and there was one child aged about 7 or 8. Ms Turner said both Respondents were in employment. Mr McKnight owned a garage and Ms White worked there part-time. She submitted that the excessive arrears together with the fact that the Respondents had failed to engage with the Tribunal process and were deliberately withholding rent were sufficient grounds for the Tribunal to exercise its discretion in favour of the Applicant.
14. The Tribunal queried whether it would be reasonable to grant the order under Ground 11 and asked if the dogs in question had caused a nuisance or were out of control or had caused damage to the property. Ms Turner suggested that the Tribunal should consider the whole circumstances. Although there had been a suggestion that the Respondents might be allowed to keep one small dog at the property, they had deliberately kept two dogs one of which was a mastiff which was very large and the other a bull terrier. There had never been any written agreement that they could keep any dogs at all. It was however accepted that it was not being suggested that the dogs had caused damage or were out of control.
15. The Tribunal noted that it had been referred to the various documents submitted with the application and the rent statement provided prior to the previous Case Management discussion.

16. Ms Turner submitted that the Tribunal should exercise its discretion and grant an order for eviction under Grounds 11 and 12 of Schedule 3 of the 2016 Act.

Findings in Fact

17. The parties entered into a Private Residential Tenancy that commenced on 29 November 2018 at a monthly rent of £575.00.

18. Clause 35 of the Tenancy Agreement prohibited the keeping of pets without prior written consent.

19. The Respondents did not have written consent to keep two dogs in the property.

20. The Respondents kept a Mastiff and a Staffordshire Bull Terrier at the property.

21. A Notice to Leave under Ground 11 of Schedule 3 of the 2016 Act was served on the Respondents by recorded delivery on 24 September 2019.

22. A Section 11 Notice was sent to Lanarkshire Council by recorded delivery post on 18 December 2019.

23. The Respondents have accrued rent arrears between 29 August 2019 and 29 July 2020 amounting to £6325.00.

24. The Respondents have indicated to the Applicant's representatives that they will only pay rent if they are permitted to keep their dogs in the property.

Reasons for Decision

25. Having considered the documents submitted in support of the application together with the oral submissions of the applicant's representative the Tribunal was satisfied that it could make a decision without the need for a hearing.

26. The Tribunal was satisfied that a valid Notice to Leave under Ground 11 of Schedule 3 of the 2016 Act had been served on the Respondents by recorded delivery post and that the appropriate days' notice had been given.

27. Having considered whether it would be appropriate to allow the Applicant to introduce an additional ground not included in the Notice to Leave namely Ground 12 of Schedule 3 the Tribunal was persuaded that in the circumstances it would be appropriate subject to the Respondents being given fair notice and the opportunity to participate in the proceedings. The Respondents by the time of the first Case Management Discussion had built up some 10 months of rent arrears and had ceased all communication with the Applicant or her representatives. It was therefore reasonable in the circumstances to allow the application to proceed under Section 52(5)(b) of the 2016 Act.

28. As the application to include Ground 12 was permitted during the period in which the Coronavirus (Scotland) Act 2020 was in force the Tribunal considered

that whilst the Act was silent on an application proceeding under Section 52 (5)(b) it must be implied that it would have the same effect as if a Notice to Leave had been served on the Respondents at this time and therefore although more than one month's rent was outstanding the Tribunal still had to exercise its discretion as to whether or not to grant an order for eviction.

29. Having heard the background and insofar as the Applicant's representative was aware the circumstances of the Respondents the Tribunal had to balance the rights of both parties. The Respondents had been given every opportunity to enter into the proceedings and had for whatever reason chosen not to do so. It appeared that both Respondents were in employment and that there was at least some suggestion that the non-payment of rent was an attempt to force the Applicant to agree to allow them to keep their dogs in the property. The Tenancy agreement clearly stated that written agreement was required before pets could be kept and there was no such agreement. Although there may have been some discussion between the parties at some point about the Respondents being allowed to keep one small dog it had never been agreed they could keep two large dogs.

30. If the only ground under which the application was proceeding had been ground 11 it might have been more finely balanced but as the Tribunal was also considering ground 12, given the very significant level of arrears that had accumulated and the lack of communication and any explanation from the Respondents the Tribunal was of the view that the interests of justice favoured the Applicant and that it should exercise its discretion by granting an order for eviction of the Respondents under both Grounds 11 and 12 of Schedule 3 of the 2016 Act.

Decision

31. The Tribunal having considered the documents submitted on the Applicant's behalf together with the oral and written submissions determines that it can make a decision without a hearing and finds the Applicant entitled to an order for the eviction of the Respondents from 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.

Graham Harding
A. Strain

11 August 2020
Date

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