



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016 and Rule 109 of The First-tier Tribunal for Scotland Housing and property Chamber (Procedure) (Regulations) 2017.

Chamber Ref: FTS/HPC/EV/20/0594

Re: Property at 66 Hareleeshill Road, Larkhall, ML9 2RB (“the Property”)

Parties:

Mr Roger Ivimy, c/o 5 Wellgate Street, Larkhall, ML9 2AG (“the Applicant”)

Mr Robert Myles Daniel Hamilton, Ms Ashley Caroline Fallow, 66 Hareleeshill Road, Larkhall, ML9 2RB; 66 Hareleeshill Road, Larkhall, ML9 2RB (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant be granted an order for possession of the Property.

Background

On 18TH February 2020 the Applicant submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.

The date of the case management discussion was intimated to the Respondents who made no written representations.

A case management discussion was held on 3rd August 2020. It was held by audio conferencing because of the current public health emergency.

The case management discussion

There was no appearance by the Respondents and the start of the case management discussion was delayed until 10.10am.

Ms Euphemia Matheson, solicitor, appeared on behalf of the Applicant. She lodged an up to date rent statement which showed that no rent had been paid since 1st November 2019 and that the balance currently outstanding is £3,315. The purpose of a case management discussion was explained by the Legal Member. Ms Matheson invited the Tribunal to determine the matter at the case management discussion and not to fix a Hearing. She indicated that she did not consider it necessary to continue consideration of the matter to a Hearing and she invited the Tribunal to issue an eviction order on the grounds that the conditions set out in Ground 12, Part 3 of Schedule 3 of the 2016 Act have been met.

Findings in Fact

- 1. The parties entered into a private residential tenancy agreement in respect of the Property.**
- 2. The private residential tenancy agreement was dated 11th and 12th March 2019.**
- 3. The tenancy commenced on 12th March 2019.**
- 4. The monthly rent due under the private residential tenancy was £375.**
- 5. The sum due and unpaid in respect of rent as at 12th February 2020 was £1,640.**
- 6. The rent arrears currently due are £3,315.**
- 7. There is no evidence that non- payment of rent is due to any issue experienced by the Respondents in relation to State Benefits.**

Documents before Tribunal

- 1. Private residential tenancy agreement dated 11th and 12th March 2019.**
- 2. Rent statement from 12th March 2019 to 12th February 2020.**
- 3. Rent statement from 12th March 2019 to 12th July 2020.**
- 4. Copy Notice to Leave dated 15 January 2020 and confirmation of service.**
- 5. Copy Section 11 intimation to local authority dated 18th February 2020.**
- 6. Sheriff Officer Certificates of Citation dated 26th June 2020**

The Law

Section 51 of the 2016 Act:

First-tier Tribunal's power to issue an eviction order

(1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 12, Part 3 of Schedule 3 of the 2016 Act

Rent arrears

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 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Reasons

The Tribunal determined the matter without the necessity of continuing the application to a Hearing. The Respondents had been made aware of the case management discussion and had not submitted written representations or appeared. The Tribunal was satisfied with the Sheriff Officer's certificate of service.

Before the Tribunal can make an order for eviction it has to be satisfied that the Respondents have been in rent arrears for three or more consecutive months. The rent statement lodged with the application evidences this. The Tribunal has to be satisfied that non- payment of rent "is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit." The Respondents have not made any submissions in this regard and the Tribunal is satisfied that no issue with benefits caused the non- payment of rent. The rent statements before the Tribunal evidence that the Respondents are in arrears of rent of more than £375.

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.



Martin J. McAllister, Legal Member
3rd August 2020