



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/20/0618

Re: Property at 126 Ocean Apartments, 52-54 Park Road, Aberdeen, AB24 5RZ (“the Property”)

Parties:

Mrs Elaine Tait, 51 Strichen Road, Fraserburgh, AB43 9SA (“the Applicant”)

Stonehouse Lettings, Osborne House, 27-30 Carden Place, Aberdeen, AB10 1UP (“the Applicant’s Agent”)

Mr Marcin Piekut and Mrs Maria Krzyzanowska, both residing at 126 Ocean Apartments, 52-54 Park Road, Aberdeen, AB24 5RZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondents

Background

- 1 By application dated 21 February 2020 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Notice to Leave dated 21 January 2020 stating that proceedings for possession will commence no earlier than 21 February 2020 and citing ground 12, together with proof of email delivery to the Respondents;
 - (ii) Copy Tenancy Agreement between the parties;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council;
 - (iv) Rent Statement
- 2 By Notice of Acceptance of Application dated 6 March 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 30 July 2020. Due to the imposition of restrictions arising from the Covid-19 pandemic a direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. Notification of the date and time, together with instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 25th June 2020.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 30 July 2020. The Applicant was represented by Ms Jackie Stewart on behalf of the Applicant's Agent. Ms Stewart was accompanied by Ms Lauren Cowling. Mr Piekut was present and advised that Mrs Krzyzanowska would not be attending.
- 4 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address her on their respective positions. Ms Stewart confirmed that the arrears had increased to the sum of £8556. She was seeking vacant possession of the property on behalf of the Applicant. Mr Piekut explained that he and Mrs Krzyzanowska were not challenging the application and accepted the arrears were due. They were both applying for bankruptcy therefore it was unlikely they would be able to pay anything towards the arrears. The Legal Member clarified that the application before the Tribunal was for recovery of possession on the basis of the rent arrears, not for payment of the sums due. The Applicant would require to pursue a separate application to recover payment. The Legal Member explained to Mr Piekut that if he was accepting the Applicant's position, the Tribunal would have no option but to grant an order for repossession of the property. Mr Piekut confirmed he understood this to be the case. The Legal Member then explained the consequences of granting the order and the timescales for enforcement.

Relevant Legislation

- 5 The legislation the Tribunal must apply in its determination of the application are the relevant provisions of the Private Housing Tenancies (Scotland) Act 2016, namely Sections 1, 51 and Paragraphs 11 and 12 of Schedule 3:-

1 - Meaning of private residential tenancy

1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51First-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.

Schedule 3

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.

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement which commenced on 19 July 2019.
- 7 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing Tenancies (Scotland) Act 2016.
- 8 In terms of Clause 8 of the said Tenancy Agreement the Respondents undertook to make payment of rent at the rate of £900 per month.
- 9 The Respondents made payments of £900 on 15 July 2019, £2700 on 18 July 2019 and £900 on 21 October 2019.
- 10 On 21 January 2020 the Applicant's Agent delivered a Notice to Leave to the Respondents by email. The Notice to Leave cited ground 12 of Schedule 3 of

the Private Housing Tenancies (Scotland) Act 2016 and confirmed that proceedings would not be raised any earlier than 21st February 2020.

- 11 The Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and complies with the provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
- 12 As at the date of service of the Notice to Leave arrears in the sum of £2844 were outstanding.
- 13 As at the date of the Case Management Discussion arrears in the sum of £8556 were outstanding.
- 14 The rent account has been in arrears for three or more consecutive months.
- 15 The rent arrears are not a result of any delay or failure in the payment of a relevant benefit.
- 16 The provisions of paragraph 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 have been met.

Reasons for Decision

- 17 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties.
- 18 The Applicant sought recovery of possession under ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon the Respondents confirming the Applicant was relying up those grounds as part of the proceedings against them.
- 19 The Tribunal accepted that arrears of £2844 were outstanding when the Notice to Leave was served and, based on the submissions from the Applicant's Agent at the Case Management Discussion, that arrears had since risen to £8556 which was accepted by the Respondents. The Respondents were not seeking to challenge the terms of the application, therefore the Tribunal considered that a hearing was not required in the matter and it could therefore determine the application at the Case Management Discussion.
- 20 Based on its findings in fact, the Tribunal accepted that the provisions of ground 12 had been met. Accordingly the Tribunal was obliged to grant an order for repossession.

21 The Tribunal therefore made an order for repossession against the Respondents.

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.

Ruth O'Hare

30/07/2020

Legal Member/Chair

Date