



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 (Act)

Chamber Ref: FTS/HPC/EV/20/0653

Re: Property at 93A Clydesdale Road, Bellshill, ML4 2QH (“the Property”)

Parties:

Starry Investment LTD, Milton House, 33A Milton Road, Hampton, Middlesex, England, TW12 2LL (“the Applicant”)

Mr Marek Witold Kapica, 93A Clydesdale Road, Bellshill, ML4 2QH (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession under Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 24 February 2020;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 September 2018;
3. Notice to Leave dated 6 January 2020;
4. Section 11 Notice to Local Authority;
5. Sheriff Officer Certificate of Service of Notice to Leave on Respondent dated 8 January 2020;
6. Email serving section 11 Notice dated 21 February 2020;

7. Rent Statement as at date of application;
8. Sheriff Officer Certificate of Service of Tribunal CMD Notification on the Respondent dated 9 July 2020.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 11 August 2020. The Applicant did not participate but was represented. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. He did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he must attend and the Tribunal could determine the matter in absence if he did not.

The Applicant's representative invited the Tribunal to grant the order sought.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

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.

The Tribunal then considered the documentary evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 10 September 2018;
2. The monthly rent was £375.00;
3. Notice to Leave had been served on the Respondent on 8 January 2020;
4. The Respondent was been in arrears of rent in the amount of £5400 as at the date of service of the Notice to Leave and in the amount of £6150 at the date of lodging of the application;
5. The Respondent was currently £8400 in arrears of rent;
6. The Respondent had been in arrears of rent in an amount greater than a months' rent for a period in excess of 3 consecutive months;
7. The arrears of rent were in no part due to delay or failure in payment of a relevant benefit;
8. Section 11 notification had been served on the local authority on 21February 2020.

The Tribunal considered that it had sufficient information to determine the matter at this stage and the procedure was fair.

The Tribunal was satisfied that Ground 12 had been established and accordingly granted the application for eviction and recovery of possession.

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.

11 August 2020

Legal Member/Chair

Date