Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/20/1019

Re: Property at 3/3 Glendevon Park, Edinburgh, EH12 5XD ("the Property")

Parties:

Mr Alan Johnstone, 26 Ashgrove Terrace, Lockerbie, DG11 2BG ("the Applicant")

Ms Tracy Mason, 3/3 Glendevon Park, Edinburgh, EH12 5XD ("the Respondent")

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order for Possession of the Property should be made in favour of the Applicant

Introduction

This case was heard at the same time as case conferenced FTS/HPC/CV/20/1020.

A Case Management Discussion (CMD) took place by teleconference at 10.00 am on 12 August 2020. The applicant was represented by Mr Alistair Stevenson of Messrs McJerrow & Stevenson, solicitors. The respondent represented her own interests personally.

Findings and Reasons

The property is 3/3 Glendevon Park, Edinburgh EH12 5XD.

The applicant is Mr Alan Johnstone who is the landlord of the property. The respondent is Ms Tracy Mason who is the tenant. The parties entered into a short assured tenancy in respect of the property. The tenancy commenced on 2 September 2013. The lease records that a deposit of £300 was required. Rent was stipulated at £625 per calendar month.

The first application by the applicant seeks an eviction order. This is under section 33 of the Housing (Scotland) Act 1988. This is an application in terms of Rule 66. The second application is an application for civil proceedings in relation to the tenancy. This is for the purposes of seeking recovery of alleged rent arrears. The application made by the applicant is said to be in terms of Rule 111. This is incorrect. Such application would relate to a private residential tenancy. The application is in fact under Rule 70.

Directions dated 5 May 2020 were issued in both cases. The electronic applications received were directed to be re-lodged with the signature and date to be placed upon them. This required to be done by 21 May 2020. The time limit was not complied with by the Applicant's agent. In terms of an email dated 31 July 2020 from the applicant's agent replacement forms were received. However it is noted what the applicant's agent did was to completely replace the form in respect of the application which seeks recovery of rent. In the initial application the sum of £937.50 is sought. At the time of re-lodging the sum sought was £1,347.41. Such attempts at increasing the sum sought are improper. Service of the applications upon the respondent was made by Sheriff Officer delivery on 13 July 2020. The sum sought in the civil recovery case was the original sum of £937.50. In terms of Rule 14A if the applicant seeks to amend the sum claimed then a formal application in terms of Rule 14A must be made intimating the amendment to the other party and the First-tier Tribunal at least 14 days prior to a Case Management discussion or hearing. The applicant has not followed this procedure.

The applicant is entitled to recover possession of the property, which is let on a short assured tenancy, subject to all the necessary notices having been issued and sent timeously. That is the position here. The necessary notices were served in advance of the tenancy being created. Two months' notice was given to the respondent by the applicant's agents of the wish to recover the property on 2 April 2020. The applicant is entitled to repossess the property on this basis. There is no need for the respondent tenant to have breached her obligations in any way.

The respondent lodged handwritten representations dated 25 July 2020. The issues which she raises do not create any legal defence to the application for repossession.

The Respondent accepted at the CMD that she had no legal defence to the eviction. The Tribunal is obliged to grant the Order for repossession on the basis of the relevant documentary evidence which is found to be credible and reliable, which is unchallenged.

The applicant initially sought the sum of £937.50 in respect of rent arrears. Later reference was made to a wish to recover greater sums in rent arrears. The required procedure to increase the sum has not been followed. As at the date of the CMD the Tribunal could only make a maximum order in the sum of £937.50. There are however other issues in relation to the sum claimed.

The tenancy has been managed by Craigflower Lettings. At the time of the applications being lodged the rent statement held by Craigflower Lettings and lodged with a latest date of 26 March 2020 shows that throughout the duration of the tenancy the respondent has paid the total of £46,562.50 and that there was a balance of zero on the respondent's account.

The directions of 5 May 2020 required clarification of the rent statement and sums sought from the respondent. A rent statement in a different formal was produced by email on 31 July 2020. This does not cover the entirety of the tenancy. It is in a different format and it is unclear who has prepared the schedule and what information and documents were used to do so. Within this new schedule provision has been made for interest being applied on late payments of rent.

The Craigfower Lettings rent statement showed a balance of zero as at 26 March 2020. However the fresh schedule of rent payments shows a debit balance of £2,335.50 apparently due to the applicant as at that date. No corresponding explanation has been provided. In terms of the rent statement produced on 31 July 2020 the debit balance suggested to exist as at 31 July 2020 is £1,020.15 (in the absence of any application of interest).

The level of alleged rent arrears is made more ambiguous by further submissions lodged on behalf of the Applicant which were sent the day before the CMD (11 August 2020). This indicates that the rent statement sent on 31 July 2020 was incorrect. It is said that before the application of interest that £1,645.15 is in fact owed (relating to an additional outstanding months' rent applied, said to have been absent before due to a clerical error in the narrative in 2015).

Within the additional submissions of the applicant's agent provided on 31 July 2020 certification of housing benefit payments in the sum of £1,434.04 (for the period 6 April 2020 to 30 June 2020) and the sum of £506.31 (for the period 1 July 2020 to 31 July 2020) are vouched.

Set against all this background the Tribunal was clear that no order for payment against the respondent would be made at this stage. The Applicant's agent appreciated the various difficulties. The parties were encouraged to have direct discussions in order to hopefully resolve the dispute regarding the rent arrears. It was noted that attempts will be made to do so. The applicant's agent requires otherwise to produce all and any further documentation to establish the rent arrears now claimed, and make a formal Rule 14A amendment, intimating this to the Respondent, within 28 days. A fresh CMD will be fixed no earlier than 6 weeks.

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.

[redacted]

12 August 2020

Legal Member/Chair **Date**