



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/20/1342

Re: Property at 3/2, 70 Balerno Drive, Glasgow, G52 1NB (“the Property”)

Parties:

Mrs Leah Tsirigotis, 82 Coustonholm Road, Glasgow, G43 1TZ (“the Applicant”)

Mr Aftab Abbassi, 3/2, 70 Balerno Drive, Glasgow, G52 1NB (“the Respondent”)

Tribunal Members:

Anne Mathie (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 Respondent

- Background

The is an application in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Chamber Rules”) being an application for eviction/possession of rented property under the Private Housing (Tenancies) (Scotland) Act 2016. An application form was received dated 17 June 2020 in which the Applicant’s representative stated that the Applicant was seeking eviction/repossession on the basis of “*Ground 8 – At least 3 month’s rent is in arrears both on the date on which the notice of proceedings was served and at the date of the hearing.*” Along with the form, the Applicant’s representative lodged a rent statement, a section 11 form, a copy of the tenancy agreement and a copy of the Notice to Leave.

The Tribunal wrote to the Applicant’s representative on 30 June 2020 seeking information in relation to service of the Section 11 Notice and the Notice to Leave. The Applicant’s representative replied by email dated 30 June 2020

enclosing a copy of the email to the local authority in relation to the Section 11 Notice and advised that *“A copy of the Notice was posted to the tenant which we received back undelivered. A copy was also posted through the letterbox manually . Unfortunately we have lost the postage receipt during an office move pre-lockdown. Can you please advise next best steps?”*

The Tribunal wrote in response on 21 July 2020 noting that the tenancy agreement allows for email communication to be sent to the parties. The Tribunal further advised that if the Applicant’s representative wished to rely on the hand delivered Notice to Leave then evidence of service should be submitted, for example, a signed statement from the person who served it, confirming their name and occupation and time, date and place of service.

The Applicant’s representative sent in a signed statement by himself confirming that he had hand delivered the Notice to Leave directly through the door of the Property at 14:25 on 11 March 2020. He also provided a signed witness statement from Kevin Nicolson, Letting Agent confirming he witnessed the hand delivery of the Notice to Leave by the Applicant’s agent at the Property at 14:25 on 11 March 2020.

The Tribunal accepted the application and scheduled it for a Case Management Discussion today. The Tribunal also wrote to the Applicant’s representative advising that:

“the legal member has accepted application EV/20/1342. Please note that she has not determined whether evidence of service of the notice to leave is sufficient, this will be a matter to be determined by the tribunal at the case management discussion, accordingly, please be in a position to address the tribunal on this issue at the forthcoming case management discussion.”

Notification of the application and the case management discussion was served on the Respondent. He was requested to submit written representations by 2 October. He was further advised that he was required to take part in the Case Management Discussion and that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. He was advised that if he did not take part in the Case management Discussion that would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

No written representations have been received from the Respondent.

- The Case Management Discussion

The Case Management Discussion took place today by teleconference as a result of the Coronavirus pandemic. Wayne Burrows, of Penny Lane Homes

Shawlands Ltd attended on behalf of the Applicant. The Applicant did not attend. The Respondent did not attend.

The Tribunal queried the reference at part 5 of the application form to Ground 8. The Applicant's representative confirmed that this should have said Ground 12 and the eviction/repossession ground was rent arrears. He confirmed that the current rent arrears figure was £4750. The Respondent had arrived unannounced at their office at the end of June and had paid £1100 towards the rent arrears. He had agreed to attend in person at the office every two weeks and pay £200 until such time as the rent arrears were cleared. The Applicant's representative advised that he had personally advised the Respondent on several occasions to apply for housing benefit but he was not aware that this had ever been done. He was aware that the Respondent had had several periods of unemployment. In relation to the service of the Notice to Leave, the Applicant's representative advised that they didn't serve this by email as the Respondent had stopped answering emails. The Notice to Leave had been served by recorded delivery post but the evidence of this had been lost in an office move. He confirmed having personally hand delivered the Notice to Leave in accordance with his signed statement and the witness statement of Kevin Nicolson. Apart from the one visit to the office from the Respondent at the end of July 2020 they had not had any further communication. He was meant to attend at the office to pay £200 every week towards the rent arrears but this had never happened. The Tribunal was adjourned for 30 minutes to allow an updated rent statement to be emailed to the Tribunal.

- Findings in Fact

The parties entered into a Private Residential Tenancy Agreement which commenced on 6 April 2018.

Rent was payable by virtue of this agreement at the rate of £450 per calendar month and was payable on the 6th of each month.

Throughout the period of the tenancy the Respondent has been in arrears of rent.

At the date of service of the Notice to Leave the Respondent was in rent arrears of £1650 and the current rent arrears stand at £4750. Ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 is therefore established.

- Reasons for Decision

The Tribunal proceeded on the basis of the written documents before it and the oral submissions of the Applicant's representative.

Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides for service of notices "*by being delivered personally to the person.*"

While the application form in error referred to Ground 8 and rent arrears, the Notice to Leave was clear that the reason for seeking repossession was on the ground of rent arrears.

There is nothing to suggest that the arrears are as a result of a delay in the Respondent receiving payment of a relevant benefit.

There having been rent arrears for three or more consecutive months prior to the Notice to Leave being served on 11 March 2020 and there being rent arrears as at today's date of well in excess of one months' rent and continuous rent arrears for three or more consecutive months, the Tribunal must grant the eviction/repossession order sought.

There was nothing before the Tribunal challenging the evidence before it.

- Decision

That the order for eviction/repossession be granted.

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.

A Mathie

Legal Member/Chair

9 October 2020

Date