



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/20/1425

Re: Property at 3 McLellan Street, Dumfries, DG1 2JN (“the Property”)

Parties:

Mr David Rae, Northfield, Auldgirth, Dumfries, DG2 0TR (“the Applicant”)

Mr Philip Lee Glover, Ms Claire Louise Searle, 3 McLellan Street, Dumfries, DG1 2JN (“the Respondents”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order in respect of the Property should be granted against the Respondents

Background

1. This is an application dated 26th June 2020, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 12 of the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 23rd January 2019, copy Notices to Leave dated 2nd March 2020, with recorded delivery tracking information indicating they were signed for by the Respondents on 4th March 2020, copy section 11 Notice to the Local Authority, served on 25th June 2020, and rent statement.
2. Intimation of the action and notification of a Case Management Discussion upon the Respondents was made by Sheriff Officers on 10th September 2020.

Case Management Discussion

1. A Case Management Discussion (“CMD”) took place by telephone conference on 6th October 2020. The Applicant was in attendance. The Respondents were not in attendance. The Tribunal delayed the start of the CMD to allow further time for the Respondents to attend.
2. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondents upon the representations of the Applicant and the material before the Tribunal.
3. The Applicant asked for the eviction order to be granted. The monthly rent is £450. The arrears at the time of lodging the action were £3900. The current arrears are £4800. The Respondents have not paid any rent since November 2019.
4. Responding to questions from the Tribunal, the Applicant said he is unaware of whether the Respondents are in receipt of a relevant benefit, or whether any delay in payment of a relevant benefit has contributed to the arrears. He has never received direct payment of benefits, although the Respondents have mentioned being in receipt of benefits in the past.

Findings in Fact

5.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 23rd January 2019 with a monthly rent of £450.
 - (ii) The Respondents have been in arrears of rent for three or more consecutive months.
 - (iii) Notices to Leave have been served upon the Respondents.
 - (iv) At the date of the CMD, the Respondents were in arrears of rent by an amount greater than the amount payable as one month’s rent.
 - (v) The Respondents’ rent arrears are not due to a delay or failure in the payment of a relevant benefit.

Reasons for Decision

6. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The

Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant 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; (2) the tenant 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 (3) 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.

7. The Tribunal is satisfied that Ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit.
8. The Tribunal is satisfied that the necessary Notices to Leave have been correctly issued to the Respondents in terms of the Act.
9. In terms of section 51(1) of the Act, the Tribunal must issue an eviction order in the circumstances.

Decision

10. An eviction order in respect of the Property is granted against the Respondents.

Right of Appeal

11. **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.**

Helen Forbes

Legal Member/Chair

6th October 2020
Date

