



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/22/0144

Re: Property at Blacket Mews, Flat 1, 1 Minto Mews, Edinburgh, EH9 1AB (“the Property”)

Parties:

Dancourt Properties Limited, Kingsway House, Havilland Street, St Peter Port, Guernsey, GY1 2QE (“the Applicant”)

Mr James-Earl Leonard Kolleh-McBorrough, Blacket Mews, Flat 1, 1 Minto Mews, Edinburgh, EH9 1AB (“the Respondent”)

Ms H Forbes (Legal Member) and Mrs E Currie (Ordinary Member)

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

Background

1. This is an application dated 18th January 2022, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant is seeking an eviction order under ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) in respect of the Property which is the subject of a tenancy agreement between the parties commencing on 3rd March 2020 at a monthly rent of £1500.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 13th July 2021, with proof of service, rent statement, pre-action correspondence and text correspondence from the Respondent.
3. Intimation of the application and Case Management Discussion was made upon the Respondent by Sheriff Officers on 25th February 2022.
4. By email dated 6th April 2022, the Applicant’s representative lodged an updated rent statement showing arrears in the sum of £31,500.

Case Management Discussion

5. A Case Management Discussion (“CMD”) took place by telephone conference on 11th April 2022. The Applicant was not in attendance and was represented by Mr Runciman. The Respondent was not in attendance.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
7. Mr Runciman moved the Tribunal to grant an eviction order as ground 12 was met, and the pre-action requirements have been complied with. The Respondent has been in arrears for a considerable time. The rent arrears are now £31,500, and the Respondent has lived rent free for 22 months. An order for payment has been made by a previous Tribunal but the Applicant has not enforced it. The Applicant will have to sell the Property as soon as they have vacant possession due to the level of arrears. It is Mr Runciman’s understanding that the Respondent was in the process of seeking emergency housing in October 2021 but was unable to obtain this without an order from the Tribunal.
8. In response to questions from the Tribunal as to reasonableness and the personal circumstances of the Respondent, Mr Runciman said the Respondent lives at the Property with a younger adult brother. There are no known vulnerabilities, and the Respondent is believed to have a car. He was a student when the tenancy commenced and it is understood his family were assisting with paying the rent, but the assistance was discontinued. At an inspection of the Property, the letting agent noticed that the Respondent was packed and ready to leave. Mr Runciman said it was his understanding that the Respondent had previously tried to get a tenancy hardship loan but the application had been unsuccessful. Mr Runciman was not aware of any delay in the payment of relevant benefits that might have caused the rent arrears.

Findings in Fact and Law

9.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 3rd March 2020 at a monthly rent of £1500.
 - (ii) The Respondent has been in arrears of rent for three or more consecutive months.
 - (iii) Notice to Leave has been served upon the Respondent.
 - (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month’s rent.

- (v) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (vi) The pre-action requirements for private residential tenancies have been met.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

10. 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.
11. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
12. The Tribunal is satisfied that Ground 12 has been established.
13. 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. The pre-action requirements were met.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
15. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
16. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

17. An eviction order in respect of the Property is granted against the Respondent.

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.

Legal Member: Helen Forbes

Date: 11th April 2022