



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/22/0987

Re: Property at 1/2 17 Brachelston Street, Greenock, PA16 9AE (“the Property”)

Parties:

Marco Medinelli T/A GFS Properties, 1 campbell Street, Greenock, PA16 8AN (“the Applicant”)

Mr Albert Wijngaards, 1/2 17 Brachelston Street, Greenock, PA16 9AE (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has been in rent arrears for three or more consecutive months and it is reasonable on account of that fact to grant the order.

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal Rules of procedure was first lodged with the Tribunal on 5th April 2022 and was accepted by the Tribunal on 24th May 2022.A case management discussion was fixed for 3rd August 2022 at 10am.

Case Management Discussion

2.The case management discussion was attended by Mr Caldwell solicitor for the Applicant. There was no appearance by or on behalf of the Respondent who had

made no contact with the Tribunal in respect of the application. The Tribunal had sight of an execution of service of the application and papers on the Respondent by Sheriff Officer placing these through the letterbox at the property on 24th June 2022. Mr Caldwell requested that the Tribunal proceed in the absence of the Respondent and the Tribunal considered that this was appropriate in terms of the Tribunal rules of procedure given that there had been service of the papers and fair notice of the case management discussion date given to him.

3. The Tribunal had sight of the Application, a tenancy agreement, a Notice to Leave, an execution of service by Sheriff Officer of the Notice to Leave, a covering letter relating to the Notice to Leave, a rent statement, a letter sent in terms of the Pre Action Protocol, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email from the relevant council acknowledging receipt of the S11 Notice. At the start of the case management discussion the Tribunal members were made aware of and received by email an up-to-date rent arrears statement.

4. The parties entered into a private residential tenancy at the property with effect from 1st March 2018. The monthly rent payable on the first of each month is £310. The Respondent had been one of two joint tenants of a previous property rented out by the Applicant and this had been a two-bedroom property. When the other tenant had left the Respondent had asked to be moved to a smaller property and the tenancy at the property which is the subject of this application commenced. The property is a one-bedroom property, and it is understood that the Respondent lives there alone. He is a Dutch national understood to be working full time in a call centre for a technology company. Mr Caldwell advised that the Respondent is believed still to live at the property as the Applicant has driven past and seen lights on there,

5. The rent arrears at the property commenced in January 2021 and the last rent payment made was in December 2020. At the time of the service of the Notice to Leave the rent arrears were £2790 and when the application to the Tribunal was lodged the rent arrears amounted to £4960. As of the date of the case management discussion these amounted to £6200. Mr Caldwell indicated that he had first become involved in the matter when the Notice to Leave was served on the Respondent by Sheriff Officers. Attempts had been made to contact the Respondent regarding the arrears without success and no responses were received. A former colleague of the Respondent had been approached to request that a message be passed on, but that person had declined to assist. A payment order had been requested and obtained in relation to the arrears (FTS/HPC/CV/21/2620 refers). Mr Caldwell had written to the Respondent advising of the decision and inviting contact, but none had been received. A letter had been sent to the Respondent along with the Notice to Leave explaining the action that was to be taken and referring the Respondent to a leaflet giving information on assistance with rent arrears during the pandemic. A letter dated 4th April 2022 had also been sent to the Respondent in terms of the pre action protocol and this letter contained a guidance note prepared by the Scottish Government giving information regarding homelessness during the Coronavirus pandemic.

6. The Tribunal considered the Notice to leave and the S11 Notice and these appeared to be in proper form and the Notice to Leave gave appropriate notice to the Respondent of the intended action.

7.The Tribunal was advised that there was no information to suggest that the Respondent had any vulnerabilities, and he was believed still to be working.

8.The Tribunal had sufficient information upon which to make a decision and was satisfied that the proceeding had been fair.

Findings in Fact

9.The Applicant and Respondent entered into a private residential tenancy at the property with effect from 1st March 2018.

10.The monthly rent payable during this tenancy is £310 per month payable on the 1st of each month.

11.The Respondent fell into rent arrears in January 2021 and no rent has been paid since December 2020.

12.The Applicant and his solicitor attempted to contact the Respondent regarding the arrears, but no response has been received.

13.A Notice to Leave in proper form and giving appropriate notice was served on the Respondent on 1st October 2021 by Sheriff Officer.

14.A notice in terms of the Homelessness etc (Scotland) Act 2003 was intimated to Inverclyde Council on 4th April 2022.

15.Two letters were sent to the Respondent on 1st October 2021 and 4th April 2022 explaining the level of arrears and signposting him to sources of information regarding rent arrears during the pandemic.

16.The Respondent has been in rent arrears during the tenancy for a period in excess of three consecutive months.

Reasons for Decision

17.The Tribunal was satisfied that it was reasonable to grant the order in the circumstances before it. The required documents appeared to be in proper form and appropriate notice had been given to the Respondent and to the local authority. Attempts had been made to comply with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. A clear case was made out for eviction and the Respondent had not appeared to suggest this was unreasonable. No rent had been paid since December 2020 and no contact had been made by the Respondent to discuss the arrears.

Decision

The Tribunal granted an eviction order in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has been in rent arrears for three or more consecutive months and it is reasonable on account of that fact to grant the order.

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.

V. B

Legal Member/Chair

3/8/22

Date