



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 109 of The First-tier tribunal for Scotland Housing and Property Chamber (procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/20/1045

Re: Property at Flat 1/1, 48 Bonnyrigg Drive, Eastwood, Glasgow, G43 1HP (“the Property”)

Parties:

Ms Naseem Ali, 31 Hunter Grove, Law Estates, Bathgate, EH48 1NN (“the Applicant”)

Ms Michelle Massey, Flat 1/1, 48 Bonnyrigg Drive, Eastwood, Glasgow, G43 1HP (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the Property be granted.

This is an application made in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Tribunal Rules”) being an application for an eviction order in respect of a tenancy agreement made under the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). An application was made dated 8 April 2020 seeking repossession of the Property on grounds of rent arrears as set down in paragraph 12 of schedule 3 of the 2016 Act. Along with the application form were lodged:

- A copy of the Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement
- A copy of the Private Residential Tenancy Agreement between the parties
- Some bank statements

- A rent statement dated 1 April 2020
- A copy of correspondence between the parties in respect of the rent arrears
- A copy of the Notice to Leave
- A copy of the section 11 Notice
- A letter of authority from the owner of the Property authorising his daughters to act

The Tribunal issued a Notice of Direction seeking confirmation that the section 11 Notice had been served on the local authority and this had been provided.

The Applicant had also emailed the Tribunal asking that her sister, Mrs Shanaz Ali represent her.

The application was accepted and assigned to a Case Management Discussion by teleconference on 7 August 2020.

Written representations were lodged on behalf of the Respondent by Govan Law Centre.

An up-to-date rent statement had been emailed by the Applicant's representative but was only received by the legal member after the Case Management Discussion had concluded.

Following the Case Management Discussion, a Notice of Direction was issued by the Tribunal seeking further documents in relation to the amount of rent arrears outstanding and the fixing of problems with the Property. A hearing on evidence was assigned for 18 September 2020.

The Applicant's representative contacted the Tribunal with the required documents on 4 September 2020.

The Respondent contacted the Tribunal by email on the 18 September 2020 to advise that *"I am not sure there is a requirement for this morning's call. I will not be defending an eviction action from the property and intend to have keys back on the 8th of October..."*

The Tribunal responded to say that the Respondent was advised to still attend the telephone hearing.

- The Hearing

The hearing took place by teleconference today due to the Covid-19 outbreak. The Applicant's representative, Shanaz Ali, and the Respondent both joined the call. Even although the respondent was not intending to defend the application, the Tribunal considered the evidence before it comprising of documents and oral submissions from both parties.

- Findings in Fact

The Property is the subject of a Private Residential Tenancy agreement between parties commencing on 8 November 2019.

In terms of the tenancy agreement rent was payable at the rate of £600 per calendar month.

Notwithstanding the terms of the tenancy agreement, rent was payable on the 8 of each month.

Rent arrears were outstanding at the date of service of the Notice to Leave on 7 March 2020 in the sum of £2200.

Rent arrears were outstanding at the date of the hearing in the sum of £5500.

Notwithstanding previous submissions from the respondent, regarding the condition of the Property and whether the sums were lawfully due, the Respondent did not intend to defend the eviction application.

- Reasons for Decision

The Respondent no longer contested the ground of eviction.

The Tribunal was satisfied that the Notice to Leave was in correct form, served appropriately, gave the requisite period of notice and that these Tribunal proceedings were thereafter brought timeously, after the date specified in the Notice to Leave, all in accordance with the terms of the Lease and the relevant provisions of the 2016 Act. The amendments to the 2016 Act made by The Coronavirus (Scotland) Act 2020 as regards notice periods have no bearing in this case as the Notice to Leave was served prior to 7 April 2020, the date of commencement of the 2020 Act.

The Tribunal was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made at the hearing that Ground 12 of Schedule 3 to the 2016 Act, had been established, namely that *“the tenant has been in arrears for three or more consecutive months.”*

- Decision

The Tribunal decided to grant an order for recovery of possession of the Property.

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.

Anne Mathie

Legal Member/Chair

18th September 2020
Date

Anne Mathie