



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order.

Chamber Ref: FTS/HPC/EV/20/0844

Re: Property at 104 Dunmore Street, Dundee, DD3 0EE (“the Property”)

Parties:

Ms Rita Davidson, 36 Menzieshill Road, Dundee, DD2 1PU (“the Applicant”)

Miss Lana Finlayson, 104 Dunmore Street, Dundee, DD3 0EE (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made. The Hearing took place by teleconference due to the covid-19 pandemic.

Attendance and Representation

The Applicant was represented by Iver McIver, Broughty Lettings, 340 2/R King Street, Broughty Ferry, Dundee, DD5 0EE.

The Respondent was represented by Rebecca Menzies, Dundee North Law Centre, 101 Whitfield Drive, Dundee DD4 0DX.

Preliminary Matters

The Legal Member confirmed with those present that they had had intimation of the representations lodged on behalf of the Respondent. All confirmed they had. There were no preliminary matters.

Decision

The First-tier Tribunal for Scotland;

- 1. Grants an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016, and**
- 2. Orders a delay of 8 weeks in the execution of this Order in terms of Rule 16A(d) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

Matters Arising

The Applicant's representative made oral submissions in support of seeking grant of an order under section 51(1) of the 2016 on the grounds of rent arrears. It was noted the tenancy between parties commenced on 1st March 2019 and the relevant notice in terms of Section 50 (1)(a) of the 2016 Act had been served on the Respondent on 4th February 2020 by Sheriff Officer. As at that date the rent arrears were £2630. The relevant notice to the Local Authority had been made with reference to same in the Application. Significant rent arrears since commencement of the tenancy in March 2019 had accrued. The monthly contractual amount due by the Respondent to the Applicant in terms of the tenancy is £550. As at date of the hearing rent due was more than £1599 as the Respondent had made sporadic payments to arrears and ongoing payments from the local authority for housing benefit were being made by the Local authority. The Applicant sought an order under Schedule 3, Ground 12.

The Respondent's representative referred to the written representations and said the Respondent accepted the outstanding arrears. She said that housing benefit were now paying £76.58 to the Applicant per week leaving a shortfall of £50.34 per week. She said further an application had been made by the Respondent to the Discretionary Housing Benefit Fund to pay the shortfall. The Respondent's representative said further that the Respondent accepted she had received housing benefit directly but had not paid this to the Applicant prior to February 2020. She said the Respondent was in receipt of statutory maternity pay, tax credits and child benefit. She also said the Respondent had 3 young children and was pregnant. The Respondent's representative said in terms of the pandemic a housing application with the local authority made in February was significantly delayed and the local authority had confirmed to her there was a backlog in housing allocation and on that basis she sought if an order was to be granted that in terms of Rule 16A (d) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 the Tribunal order a delay in execution of same.

Reasons for Decision and Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. There was sufficiency of agreement in the material issues with the case.
2. The Applicant sought an Order for Eviction on the grounds of rent arrears.
3. The Tribunal was satisfied that the Applicant had a valid lease as the heritable proprietor of the Property with the Respondent and as such could bring this Application.
4. The Tribunal was satisfied that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
5. Further the Tribunal was satisfied on a balance of probabilities and on the evidence before it, that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit. The Respondent's representative said the Respondent accepted when the arrears accrued she had received the housing benefit directly but had not paid this to the landlord.
6. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
7. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
8. The Tribunal noted the Local Authority under the 2016 had been notified.
9. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent.
10. The Tribunal was however also satisfied that based on the overriding objective and the current covid-19 pandemic circumstances, and that it was reasonable, proportionate and fair to both parties to order a delay of 8 weeks to the execution of this Order in terms of Rule 16A (d) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

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/Chair

17.8.2020 _____
Date