



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

Chamber Ref: FTS/HPC/EV/20/0968

Re: Property at 4 Bingham Way, Edinburgh, EH15 3NL (“the Property”)

Parties:

Ms Gulnaz Iqbal, 25 Bridge Street, Musselburgh, East Lothian, EH21 6AA (“the Applicant”)

Mrs Stacey Hoggan, 4 Bingham Way, Edinburgh, EH15 3NL (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondent for possession of the Property at 4 Bingham Way, Edinburgh, EH15 3NL under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 17 March 2020 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order to evict the Respondent from the Property due to rent arrears.

- 2 On 27 April 2020, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
- 3 A Case Management Discussion (“CMD”) proceeded on 17 August 2020. The Respondent had been invited to attend the CMD and make representation, but was not in attendance and did not make any representations. During the course of that CMD the Tribunal had allowed the application to be amended to proceed under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The CMD was adjourned for the Applicant to provide an up to date rent statement and to address the Tribunal on the outstanding rent. A new CMD was assigned to proceed on 30 September 2020.
- 4 On 1 September 2020, the Tribunal advised the Respondent that the adjourned CMD would proceed on 30 September 2020. This paperwork was served on the Respondent by way of recorded delivery post.

Case Management Discussion

- 5 The adjourned CMD proceeded by way of teleconference call. The Applicant appeared on her own behalf. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
- 6 The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 23 April 2018, the original rent statement which the Applicant had lodged with the application and an up to date rent statement, a Notice to Leave dated 20 January 2020 with accompanying email to the Respondent and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to the Edinburgh City Council dated 20 February 2020.
- 7 The Tribunal had noted that the Notice to Leave dated 20 January 2020 had not only referred to rent arrears but to anti-social behaviour. The Tribunal sought clarification from the Applicant as to whether she wished the Tribunal to proceed under Ground 14 of Schedule 3 of the 2016 Act, being the anti-social behaviour ground. The Applicant advised she only wished to proceed

under the rent arrears ground. She confirmed she was seeking an order for eviction.

- 8 At the point of lodging the application the Tribunal had noted the arrears were £4253 and that the rent statement lodged showed that no rent, which was £1000 per month in terms of Clause 7 of the tenancy agreement, had been paid since 28 February 2020 when the Respondent had paid £655.17. The Applicant referred to a statement which she had lodged with the Tribunal on 18 August 2020 in response to a Notice of Direction which showed arrears to 23 July 2020 were £9598.42. The Applicant submitted that no payments had been received since then and that current arrears amounted to £11 598.42.
- 9 The Tribunal asked what the arrears were at the point the Notice to Leave had been served on the Respondent on 20 January 2020. The Applicant advised the arrears at that stage were £4253.59. She explained that the arrears had started to accrue from the start of the tenancy when she received no rent for the first three months. In August and September 2018 there was a shortfall in rent paid. No rent was paid in August 2019. The Respondent had paid £655.17 on 28 February 2020 which was the last time she had paid anything towards rent.
- 10 The Applicant further explained that she had contacted Edinburgh City Council about the Respondent's rent as she was aware the Respondent was in receipt of benefits. She explained the Council had told her they had paid the rent money direct to the Respondent. The Applicant explained that despite that the Respondent had not passed the rent money to her.
- 11 The Applicant further explained she had been in contact with the Respondent's Social Worker. The Social Worker advised the Applicant that the Respondent was planning to move out and would hand the keys back. It appeared that the Respondent did move out, but moved back in and did not hand the keys back to the Applicant.
- 12 The last communication the Applicant had with the Respondent was in June 2020 when the Applicant had requested access for repairs. The Respondent had not given access. To the best of the Applicant's knowledge the Respondent still lived at the Property. She had not handed the keys back.
- 13 The Tribunal also noted the Notice to Leave under Section 50(1) and Ground 12 of Schedule 3 of the 2016 Act dated 20 January 2020 addressed to the Respondent and sent to the Respondent by email on 20 January 2020. The Tribunal noted that in terms of Clause 3 of the tenancy agreement parties had agreed that communication including notices could be made by email. The Tribunal noted the requisite Notice in terms of Section 11 of the

Homelessness (Scotland) Act 2003 had been served on the Edinburgh City Council on 20 February 2020.

Findings in Fact

- 14 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement starting on 23 April 2018 in relation to the Property. In terms of Clause 7 of that tenancy agreement, the Respondent agreed to pay the Applicant a calendar monthly rent of £1000 due on 23rd of each month.
- 15 The Respondent had paid no rent for the first three months. There was a shortfall of rent in August and September 2018. The Respondent had paid no rent in August 2019. The Respondent last paid rent of £655.17 on 28 February 2020. She has paid no rent since then. The Respondent is in breach of Clause 7 of the tenancy agreement.
- 16 The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.
- 17 On 20 January 2020, the Applicant served a Notice to Leave on the Respondent by sending it to her by email requesting that she remove from the Property by 20 February 2020. Such service was permitted in terms of Clause 3 of the tenancy agreement.
- 18 At the time of serving the Notice to Leave on 20 January 2020 the Respondent was in arrears of rent of £4253.59. She had been in arrears of rent for more than three consecutive months at that stage.
- 19 The Respondent's current arrears are £11 598.42.
- 20 The Respondent has not returned the keys to the Property.
- 21 A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Edinburgh City Council on 20 January 2020.

Reason for Decision

- 22 The Applicant provided evidence of non-payment of rent in the form of the rent statements. The Tribunal was satisfied on the basis of the tenancy agreement, rent statements and the supporting oral submissions made on by the Applicant that the Respondent had been in arrears of rent for over three consecutive months and was in excess of over a month's arrears both at the

time the Notice to Leave was served on 20 January 2020 and currently. The Respondent had not paid any rent since 28 February 2020. There was no evidence that the arrears had accrued due to a delay or failure in payment of any benefit. The Applicant understood that the rent had been paid direct the Respondent who had failed to pay it to the Applicant. The Respondent is in breach of Clause 7 of the tenancy agreement. In the circumstances, the Notice to Leave having been served and the appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 also having been served, the Applicant is entitled to repossess the Property under Section 51 and Ground 12 of Schedule 3 of the 2016 Act.

Decision

23 The Tribunal granted an order for repossession 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.

Shirley Evans

30 September 2020

Legal Member

Date