



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/19/2535

Re: Property at 9 Corseford Avenue, Johnstone, PA5 0PD (“the Property”)

Parties:

Mr Basman Karaali, 18 Hagg Road, Johnstone, PA5 8TD (“the Applicant”)

Mr Kenneth Grant, 9 Corseford Avenue, Johnstone, PA5 0PD (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 9th August 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave and execution of service, section 11 notice, and rent arrears statement.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied. The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd November 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 23rd December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was represented by Mr Johnstone, letting agent. The Respondent appeared, and was not represented. He was accompanied by his mother, Mrs Grant, as a supporter.

The Applicant explained that the Respondent was joint tenant of the Property with his partner, and that they both contributed to the rental. The Respondent confirmed that he and his partner had split up, and the Tribunal explained that nonetheless, he remained jointly and severally responsible for the whole monthly rent in terms of the lease agreement, and not just a one-half share.

The Applicant after lengthy explanation was able to demonstrate to the Tribunal the current rent arrears figure. He had provided a rent arrears statement up to 2nd June 2019, which showed that £1,805.31 was outstanding as at that date.

Since then a further 6 months of rent was due, totalling £3,450.00 (the monthly rent being £575.00 in terms of clause 7 of the private residential tenancy agreement). That produced a total of £5,255.31.

However, the Applicant had received payments in benefits of £317.14 on 18th July 2019 and £2,123.20 on 15th December 2019. Once these payments were deducted from the sum due, this resulted in current rent arrears of £2,814.97 as of today's date.

The Respondent candidly accepted that this figure was correct, and that he was liable for this sum. He accepted that rent arrears were in excess of 3 months, and that the Tribunal was required to grant an eviction order in those circumstances.

The Tribunal was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 18th June 2019 relied on grounds 11 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that rent arrears at that time amounted to £1,805.31, accumulated over the previous three months under the private residential tenancy agreement between the parties.

It also narrated that the Respondent was in breach of the terms of the agreement in respect of responsibility for certain damage to the Property which he was responsible for repairing in terms of the lease, which repairs he had not yet undertaken.

The Respondent accepted that there was damage to the Property, and that he was responsible for restoring it to the condition it was in previously, and indicated that he was quite willing to undertake some of that work.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private

residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, 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, and (2) 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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period in excess of three months.

The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears, and the Respondent did not seek to argue such a reason.

The Tribunal found it unnecessary to consider ground 11, as the parties reached amicable agreement at the Case Management Discussion for the Respondent to be given the opportunity to rectify the various damages to the Property.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

23/12/19

Date