

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/19/1358

Re: Property at 40 Ivanhoe Drive, Glenrothes, Fife, KY6 2NB (“the Property”)

Parties:

Russell J Graham Limited, a company incorporated under the Companies Acts and having its Registered Office at Raecruick Farm, Dunshalt, Cupar, Fife, KY14 7ER (“the Applicant”)

Mr Martin Fuller, 40 Ivanhoe Drive, Glenrothes, Fife, KY6 2NB (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an Order for Possession of the Property against the Respondent

Background

The Applicant was the owner of the Property. The Respondent was the tenant of the Property under a lease granted on 24 January 2019. The Applicant alleged that arrears of rental had built up and they therefore sought an order for possession of the Property against the Respondent.

The Tribunal had the following documentation before it:-

- The Applicant’s application to the Tribunal dated 2 May 2019;
- Rent statement brought down to 9 July 2019;
- A copy of the lease of the Property from 24 January 2019;
- Notice to leave dated 25 March 2019;
- Evidence of email service of the Notice to Leave;
- S11 Homelessness Notice;
- Copy of the Tribunal Papers served on the Respondent dated 5 June 2019 and Certificate of Service from Sheriff Officers dated 6 June 2019.

The Case Management Discussion (“CMD”)

The Tribunal held a CMD at the Lomond Centre, Woodside Way, Glenrothes on 9 July 2019 at 10am. Mr Ralph McCran of Malcom Jack & Matheson, Solicitors represented the Applicant. Mr Andrew Graham and Ms Robyn Graham were also present as agents.

The Respondent was neither present nor represented. The Tribunal noted that the papers for the CMD had been validly and timeously served on him personally by Sheriff Officers. The papers indicated very clearly that a decision could be made at a CMD in the absence of the Respondent. Accordingly the Tribunal was satisfied that it had the power to determine the matter at the CMD and that it was appropriate to do so.

One preliminary matter arose. The Tribunal noted that the lease was in the name of Mr Andrew Graham and that the application had been made by him. There had been a suggestion previously that the property was in the name of Drums Trust and that Mr Graham was a trustee of that trust. However, the Tribunal noted from its own investigations that the title was in the name of Russell J Graham Limited. This was a company owned primarily by the son of Mr Andrew Graham. After discussion, Mr McCran was able to advise that title was indeed held by the limited company. It had previously been held by Drums Trust but had been transferred in 2015 as part of a group of properties. Mr Andrew Graham managed the properties for his son/the company. He had presumed that as he was the manager/agent that he would put himself down as the landlord on the lease. Mr McCran explained that this had simply been a misunderstanding on the part of the Graham family more generally and that this would be dealt with correctly going forward. Mr McCran confirmed he had spoken to Russell Graham and the family accountant who had both confirmed the position and that he had been instructed to appear on behalf of the company.

The Tribunal was aware that in terms of Clause 14 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 it was competent for the Tribunal to substitute a party to the application. Mr McCran made a motion for this. The Tribunal saw no prejudice to either party in allowing this and accordingly granted the motion and substituted Russell J Graham Limited in place of Mr Andrew Graham as the applicant.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property
- A lease had been granted to the Respondent of the Property, with effect from 24 January 2019 at a rental of £542 per calendar month.
- Whilst the first month's rent had been paid by the Respondent he had then indicated to Ms Robyn Graham that he was struggling to pay.
- Universal Credit payments were made on 1 and 31 May and 1 July to the sum of £521.25

- One shortfall payment of rent had been made by the Respondent on 3 May 2019 but no other shortfall payments had been made.
- The Respondent was, at the point of the submission of the application to the Tribunal, more than 3 months in continuous rent arrears and as at the date of the CMD more than one months rent was still outstanding. At the date of the CMD £1,125.22 remained outstanding

Reasons for the Decision

The Tribunal noted that the Applicant had served a Notice to Leave on 25 March 2019. The Notice to Leave specified the earliest date that the Applicant could apply to the Tribunal was 26 April 2019. The Applicant applied to the Tribunal on 2 May 2019. By that point, the Respondent was in more than 3 consecutive months' rent arrears.

Mr McCran put before the Tribunal an up to date rent arrears statement. This showed that arrears of £1083.74 had built up by the point of submission of the application to the Tribunal. Universal Credit of £521.26 had started being paid at around the same point the application to the Tribunal was made. Payments had been made on 1 and 31 May and 1 July 2019. However, each of these payments had been c£21 short of the required rental. One shortfall payment of £21 had been made on 3 May 2019 by the Respondent but no further shortfall payments had followed. Accordingly, the rent arrears were increasing, albeit at a very modest rate.

The Tribunal was conscious that whilst the first part of the mandatory test had been established under Ground 12 of Schedule 3 the Act (3 months continuous rent arrears of any amount and more than one month outstanding at the date of the CMD), the Tribunal also required to be satisfied that the arrears were not wholly or partly due to delay or failure of payment of relevant benefit. The Tribunal considered the position. It was clear that benefit was now being paid. No evidence was produced to suggest that the Universal Credit was being paid significantly in arrears or that there had been a delay or failure in the Respondent receiving the monies due to him. The Respondent had not indicated any issues to the Applicant or the Tribunal in this regard and he had not appeared at the CMD to advise of the position. In the absence of any information to the contrary the Tribunal was of the view, on the balance of probabilities, that payment of Universal Credit had been made for the relevant periods and that there were no ongoing issues of failure and delay that would entitle the Tribunal to delay matters. It appeared that the arrears were simply remaining outstanding and there was no sign of these being repaid by Universal Credit. On that basis the Tribunal was satisfied that the second part of the test had also been met and that the Tribunal was obliged to grant the order as requested.

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.

Ewan Miller

Legal Member/Chair

09 July 2019

Date