



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/19/0622

Re: Property at Flat 24, 5 Canal Walk, Edinburgh, EH3 9RA (“the Property”)

Parties:

Arringford Limited 03292065, Maizelands Limited 03292060, 20 Churchill Place, London, E14 5HJ (“the Applicant”)

**Mr Kevin Sutherland,
Respondent”)**

(“the

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the said Act.

- Background

An application was made to the Tribunal under Rule 109 of the Rules, seeking a Private Residential Tenancy Eviction Order against the Respondent. Said application was dated 22 February 2019.

- The Case Management Discussion

The Case Management Discussion (“CMD”) took place on 3 May 2019. The Applicant was represented by Kirstie Donnelly of Bannatyne Kirkwood France & Co.

A representative from the Applicant's managing agent was also present. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent by way of Sheriff Officer service at the Property on 15 April 2019 and he had received satisfactory notice of the date and time of the CMD. The Tribunal was therefore satisfied that the CMD could proceed in the Respondent's absence.

Ms Donnelly sought the order for repossession to be granted in terms of the application. A Notice to Leave had been served on the Respondent on the basis of ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), in that the Respondent was in arrears of rent. Ms Donnelly submitted that the Respondent had been in continuous arrears of rent for a period in excess of three months, and further was due a sum which equated to an amount in excess of the monthly rental payment. On that basis it was submitted that the Applicant was entitled to the Order sought. An updated rent statement was lodged in advance of the CMD which showed a total balance due of £17,677.47. A separate application had been raised by the Applicant seeking a payment order in respect of the arrears due, in terms of Rule 111 of the Rules, under case reference FTS/HPC/CV/19/0627.

- Findings in Fact

The Tribunal made the following findings in fact:

1. The parties entered into a Private Residential Tenancy Agreement which commenced on 13 December 2017;
2. In terms of clause 8 of the said tenancy agreement, the Respondent agreed to make payments of rent to the Applicant in the sum of £1525 per calendar month;
3. At the date of the CMD, rent was due by the Respondent to the Applicant in the amount of £17,677.47;
4. At the date of the CMD, the Respondent had been in arrears of rent for a continuous period of at least three months;
5. At the date of the CMD, the Respondent had accrued arrears of rent which equated to a sum higher than the equivalent of one month's rent.

- Reasons for Decision

Ground 12 of Schedule 3 to the 2016 Act states as follows:

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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

(ii) 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

(b) 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Tribunal was satisfied that Ground 12 had been established and that it must grant the order sought, in terms of section 12(2) as aforesaid.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the said Act.

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

Date

3/5/19
