



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/19/0083

Re: Property at 28H Watchmeal Crescent, Clydebank, Glasgow, G81 5ED (“the Property”)

Parties:

Mr Philip Ross, c/o Infiniti Properties, 1016 Argyle Street, Glasgow, G3 8LX (“the Applicant”)

Mr Fergal Kane, 28H Watchmeal Crescent, Clydebank, Glasgow, G81 5ED (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order against the Respondent evicting him from the property.

Background

1. By application dated 9 January 2019 the Applicant’s representatives Hardy MacPhail, Solicitors, Glasgow, applied to the Tribunal for an order for payment in respect of alleged rent arrears due by the Respondent in terms of his tenancy of the property. The Applicant’s representatives provided the Tribunal with a copy of the lease, a copy rent statement, copy Notice to Leave, Tenant’s acknowledgement of Notice to Leave and copy notice to Local Authority under Section 56(1) in support of the application.
2. Following further correspondence between the Tribunal and the Applicant’s representatives a legal member of the Tribunal with delegated powers accepted the application by Notice of Acceptance dated 1 April 2019 and a Case Management Discussion was assigned.

3. A Case Management Discussion assigned for 14 May 2019 was postponed at the request of the Applicant's representatives and a further Case Management discussion was assigned to take place on 6 June 2019.
4. Intimation of the Case Management Discussion was sent to the applicant's representatives by post on 3 May 2019 and to the Respondent by Sheriff Officers on 7 May 2019.

Case Management Discussion

5. The Case Management Discussion was held on 6 June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. It was attended by Mr Michael Ritchie on behalf of the Applicant. The Respondent did not attend or give any explanation for his non-attendance. The Tribunal on being satisfied that proper intimation of the Case Management Discussion had been given to the Respondent proceeded in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").
6. Mr Ritchie confirmed the parties had entered into a Private Residential Tenancy Agreement in respect of the property that commenced on 13 July 2018 at a monthly rent of £450.00.
7. Mr Ritchie provided the Tribunal with an up to date rent schedule that showed that the current arrears stood at £3818.30. He said the Respondent had paid rent erratically between August and October 2018 but had failed to pay any rent at all since the last payment received on 8 October 2018.
8. Mr Ritchie confirmed that the Notice to Leave had been sent by the Applicant's Letting Agents Infiniti Properties by email to the Respondent on 7 December 2018 and that the Respondent had acknowledged receipt the same day again by email. It was confirmed that the tenancy agreement entered into by the parties provided for notices being sent by email.
9. Mr Ritchie confirmed that the earliest date that an application could be made to the First-tier Tribunal was stated on the Notice to Leave as being 7 January and that this was more than the minimum 28 days provided in the legislation.
10. Mr Ritchie confirmed that intimation of the application had been given to the local authority and referred to the copy notice submitted to the Tribunal.
11. With regards to the grounds for eviction the Tribunal queried whether Ground 11 was appropriate when the only evidence in support of there being a breach of a tenants obligation was non-payment of rent. The tribunal pointed out that sub-paragraph(3) of paragraph 11 of Schedule 3 of the 2016 Act specifically excludes the requirement to pay rent from Ground 11. Having considered the terms of Paragraph 11, Mr Ritchie acknowledged that the Notice to Leave ought to have been made using Ground 12 and not Ground 11 and accepted

that the Tribunal would be entitled to refuse to grant the order sought in terms of Ground 11.

12. With regards to the order sought under Ground 1, Mr Ritchie referred the Tribunal to the correspondence submitted in support of the application including the correspondence from the Applicant's solicitors who had been instructed in the marketing and sale of the property once vacant possession had been obtained. In particular Mr Ritchie referred the Tribunal to the letter from McVey & Murrucane, Solicitors, Glasgow dated 8 March 2019 confirming they were instructed in the sale of the property and also the letter of 11 March from Infiniti Properties Management Limited, Glasgow, confirming they too were instructed. Mr Ritchie confirmed that attempts had been made to access the property to prepare a Home Report but this had not been successful. He submitted that no more could be done to prove that the Applicant intended to sell the property. He explained that the Applicant had taken the decision to sell the property because of the difficulties he had experienced with the Respondent and could no longer afford to fund the cost of the property. So far as Mr Ritchie was aware the property was the only one the Applicant had for rent. In Mr Ritchie's submission the order should be granted.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 13 July 2019 at a monthly rent of £450.00.
14. The Respondent was served with a valid Notice to Leave by email on 7 December 2019.
15. The Respondent acknowledged receipt of the Notice to Leave by email on 7 December 2019.
16. The Notice to Leave specified two grounds on which the applicant was seeking to evict the Respondent namely that he intended to sell the property (Ground1) and that the Respondent was in breach of a term of the tenancy agreement (Ground11).
17. The Respondent was in arrears of rent at the date of service of the Notice to Leave.
18. The Applicant has instructed Infiniti Properties Management Limited and McVey & Murrucane , Solicitors to act on his behalf in the sale of the property.
19. The Applicant's agents have attempted to obtain access to the property to prepare a Home Report but have been unable to do so.

Reasons for Decision

20. The Tribunal was satisfied from the documentation submitted and the evidence provided by Mr Ritchie at the Case Management Discussion that

there was a Private Residential Tenancy agreement in place between the parties and that the Respondent remained in occupation of the property.

21. The Tribunal was satisfied that a Notice to Leave had been properly served on the Respondent and that he had acknowledged receipt. Adequate notice of an application being made to the Tribunal had been given to the Respondent.
22. The Tribunal was not satisfied that an application for the eviction of the Respondent under Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") could be sustained. The Applicant was seeking an order under that ground on the basis that the Respondent was in breach of a term of the tenancy agreement by failing to pay rent. However, sub-paragraph (3) of Ground 11 specifically excludes non-payment of rent from that ground. The Tribunal was of the view that if the Applicant had wished to seek eviction based on non-payment of rent he should have used Ground 12 instead.
23. The Tribunal was satisfied that the Applicant had taken what steps he could to instruct agents in the sale of the property. Whilst the Tribunal would have preferred to have seen a Home Report it was prepared to accept in the circumstances that this had not proved possible and that it was the Applicant's genuine intention to market the property for sale at market value on obtaining vacant possession. The Tribunal was therefore prepared to grant the order sought in terms of Ground 1 of Schedule 3 of the 2016 Act.

Decision

24. The Tribunal finds the Applicant entitled to an order against the Respondent for his eviction from the property under Ground 1 of Schedule 3 of the 2016 Act and refuses to grant an order under Ground 11 of Schedule 3 of the 2016 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.

Graham Harding

Legal Member/Chair

Date

6 June 2019

*Insert or Delete as required