



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/19/0460

Re: Property at 29 Carson Drive, Irvine, KA12 8HR (“the Property”)

Parties:

Mrs Daljit Kaur, 1 Pollock Morris Drive, Kilmarnock, KA2 0EJ (“the Applicant”)

Mr Ben Nguyen, 29 Carson Drive, Irvine, KA12 8HR (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

The Applicant lodged an application on 12th February 2019 seeking eviction of the Respondent from the property at 29 Carson Drive, Irvine, KA12 8HR in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the Application were:

1. Copy Notice to Leave
2. Copy Bank Statements
3. Proof of Service of Notice To Leave
4. Copy Private Rented Tenancy Agreement
5. Copy section 11 Notice

Prior to the hearing the Applicant also lodged a rent statement up to 13/3/19. The rent arrears at that date, shown in the statement, were £7155.

Case Management Discussion (“CMD”)

The Applicant was present, along with her representative, Sonia Samra, and Steven Spence from Lomond Property, who are the letting agents.

The Tribunal Administration Office and the Reception at the venue had each received a phone call just after 9am from a man named James, claiming to be the brother of the Respondent, saying that the Respondent had been in a serious car accident over the weekend and was unable to attend, and asking for the date to be rescheduled.

The Chairperson began by having those present introduced themselves. She explained the purpose of a Case Management Discussion in terms of Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

The Chairperson asked the Applicant and her representatives for their views on an adjournment. Miss Samra said that given the level of rent arrears they would prefer that the CMD proceed.

The overriding objective of the Tribunal is to deal with proceedings justly. The Respondent could have asked someone to represent him at the CMD. Nothing in writing had been submitted to the Tribunal. There was no evidence that the respondent could not attend or send a representative. The interests of the Applicant also have to be considered, and the rent is substantially in arrears. The Chairperson decided to proceed with the CMD.

Mr Spence told the Tribunal that his agency had become involved in September 2018. The Respondent had been in the property since April 2018. He inspected the property on 29th September 2018. The Respondent was not present; the inspection was handled by his girlfriend. Mr Spence has never met the respondent. An agreement was reached that from October 2018 the rent would be paid direct to Lomond. No rent payments were ever received.

Notice To Leave was served, and it stated within that the reason supporting the ground of eviction was that no rent had been received since July.

To date no further payments have been received and there has been no contact by the respondent to either the Applicant or Lomond.

Mr Spence submitted that the ground had been met and the eviction should be granted.

Findings In Fact

1. The parties entered into a tenancy agreement for the property on 13th April 2018.
2. The rent payable was £895 per month.
3. Notice to Leave was served on the Respondent on 8th November 2018 giving the correct period of notice.

4. At the date the Notice to Leave was served the rent was in arrears by 3 months.
5. At today's date the rent is in arrears by 8 months, totalling £7155.

Reasons For Decision

The ground of eviction has been established in that at the time of serving the Notice To Leave the rent was in arrears by 3 months, and is now in arrears by 8 months.

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.

Ms Alison J Kelly

Legal Member/Chair

J

Date

15/4/19