



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/20/0498

Re: Property at 1 Wester Kippielaw Gardens, Dalkeith, Midlothian, EH22 2GG (“the Property”)

Parties:

Dr Mohamed Otify, 3 Wayland Court, Leeds, LS16 8LU (“the Applicant”)

Mr Kriss Ferrier, Ms Melissa MacLeod, 1 Wester Kippielaw Gardens, Dalkeith, Midlothian, EH22 2GG; 1 Wester Kippielaw Gardens, Dalkeith, Midlothian, EH22 2GG (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.

Background

1. By application dated 11 February 2020 the Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, Notice to Leave with copy emails to the Respondents, rent statement and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 26 June 2020. Both parties were notified that a case management discussion (“CMD”) would take place by telephone

case conference on 13 August 2020 at 10pm and they were required to participate.

3. On 29 July 2020, the Applicant submitted an updated rent statement showing a balance outstanding on 22 July 2020 of £5700. A copy of this was sent to the Respondents by the Tribunal, and was also sent by the Applicant to the Respondents by post and email.
4. The case called for a CMD on 13 August 2020 at 10pm. The Applicant was represented by Miss Donnelly, solicitor. The Respondents did not participate.

Case Management Discussion

5. Ms Donnelly advised the Legal Member that the Respondents remains in occupation of the property. They now owe the sum of £5700 in unpaid rent and there has been no contact with the Applicant. The Applicant has no reason to believe that the rent arrears are as a result of a failure or delay in payment of housing benefit or universal credit. Miss Donnelly confirmed that the Applicant seeks an eviction order.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
8. The Respondents are due to pay rent at the rate of £1400 per month.
9. The Respondents have been in arrears of rent since 7 May 2019
10. The Respondents owe the sum of £5700 in unpaid rent to the Applicant

Reasons for Decision

11. The application was submitted with a Notice to Leave dated 7 January 2020, together with copies of emails sent to both Respondents, which establish that the Notice was sent to the Respondents on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 7 February 2020. The application to the Tribunal was made after expiry of the notice period. The Legal Member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Legal Member is

satisfied that the Applicant has complied with Section 56 of the 2016 Act.

12. Section 51(1) of the 2016 Act states, “ The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 states “(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 in 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 months rent under the tenancy on that day, and (ii) has been arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more continuous months, and (b) the Tribunal is satisfied that the tenants 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.”
13. The Legal Member is satisfied from the rent account lodged with the application, and the information provided at the CMD, that the Respondents owe the sum of £5700 in unpaid rent. They have been in arrears of rent since 7 May 2019. They have therefore been in arrears for three or more consecutive months both at the date of service of the Notice to leave, and the date of the CMD. The sum owed is more than one months rent under the tenancy. The Legal Member therefore concludes that the eviction ground has been established.
14. As the Applicant has complied with the requirements of the 2016 Act, and as the eviction ground has been established, the Legal Member determines that an eviction order should be granted.

Decision

15. The Legal Member determines that an eviction order should be granted against the Respondents.

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.

Josephine
Bonnar

Josephine Bonnar, Legal Member

13 August 2020