



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/20/0557

Re: Property at 7 Inglis Brae, Blackwood, Lanark, ML11 9GS (“the Property”)

Parties:

Mr Bruce Donnellan, 2 Barrow Park, Blackwood, Lanark, ML11 9ZN (“the Applicant”)

Mrs Judith Assumda Donkor, 7 Inglis Brae, Blackwood, Lanark, ML11 9GS (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the applicant against the respondent for the property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave dated 9 December 2019 with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the rent statement

3. The Applicants' agent Mr McDermott from Friels Solicitors appeared on behalf of the Applicant. There was no appearance by the Respondent.
4. This case had been continued from 14 July 2020 and 14 August 2020 as the Applicant had not been in a position to address the tribunal on,
 - a. The up-to-date rent situation; and
 - b. When universal credit had commenced.
5. On 30 September 2020, the respondent had emailed the tribunal to advise that she had nothing to say about the application; and that she would not be attending the further case management discussion.
6. Notice of the Hearing had been sent to the Respondent on 6 October 2020.
7. I was prepared to proceed with today's case management discussion in the absence of the Respondent.

Discussion

8. The Applicant's agent first referred me to the email of 21 October 2020 advising that they also sought eviction on the ground that the landlord wished to sell the property. He advised that they were no longer insisting on their motion to amend the application. He advised that they wished to proceed to seek recovery of possession on the basis of ground 12 unpaid rent. I allowed the motion to amend the application to drop.
9. The Applicant's agent then referred me to the papers which had been lodged in support of the application. He advised that the notice to leave sought eviction under ground 12, rent arrears for a period of more than 3 months. There was evidence of service of the notice to leave. He advised that there had also been served a section 11 notice and there was evidence of service of that notice.
10. He advised that the case had been continued due to clarification being sought in relation to what rent was outstanding and what universal credit had been paid. He advised that the Applicant had provided the following clarification to him:- that rent had not been paid by the Respondent for the month of August; there has been a shortfall of £100 in September; it had been paid in October; but it had not been paid in November (all in 2019). He advised that universal credit commenced in around 23 December 2019 for the sum of £803.40 and it had been paid monthly since that date. He advised that there was an ongoing shortfall in rent of £46.60 and this shortfall had not been paid.
11. He advised that the current rent arrears were £2036.40. He advised that the respondent had been asked to repay the arrears, payments to the arrears had not been forthcoming, however. He advised that he was not aware of the arrears being caused by a delay in any relevant benefit being paid; and he noted that universal credit had now been paid since December 2019.

12. He advised that when the notice to leave was served on the Respondent the arrears were in excess of one month's rent and the arrears had been on the rent account for a period exceeding three consecutive months when the notice to leave was served.
13. He advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

14. The Tribunal found the following facts established:-
15. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 March 2019.
16. The tenancy was for the property 7 Inglis Brae, Blackwood, Lanark.
17. The tenant is Assumpta Judith Donkor.
18. The landlord is Bruce Donnellan.
19. Clause 7 of the Tenancy Agreement provides that the rent for the property is £850 per calendar month. It is payable in advance and due on the 28th of each month.
20. There was a notice to leave addressed to the Respondent. It contained information for the Respondents as to why an eviction order was sought. It was dated 9 December 2019. It confirmed that proceedings would not be brought until 24 January 2020.
21. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
22. That rent arrears had been outstanding since August 2019.
23. There were rent arrears outstanding at the date of the application which totalled at least one month's rental due under the tenancy.
24. There appeared to be rent arrears outstanding at today's date totalling £2,036.40, at least one month's rental due under the tenancy.
25. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
26. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

27. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
28. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
29. Sub paragraph 1 states that “It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.”
30. Sub paragraph 2 provides that the Tribunal must find that the grounds 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 payment as one month’s rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
31. I noted that there appears to be rent arrears on the account which were in existence for more than three months when the notice to leave was served and they are still due. The respondent has indicated that she does not wish to appear in this case and that she had nothing to say in respect of her position. I assume therefore that she does not wish to defend these proceedings.
32. The Applicant’s agent has submitted that he is not aware that the arrears accrued due to a delay or failure in the payment of relevant benefits. I also noted that the Respondent is now in receipt of universal credit which is being paid into the rent account. There did not appear to have been any backdate payment made. As the Respondent did not take part in today’s hearing, I have no other evidence before me regarding the question of benefits for this tenant. On balance therefore, I consider that the terms of sub-paragraph 2 are met and accordingly, I find that the ground in sub paragraph 1 applies; and therefore I consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

33. The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

09/11/20

Legal Member/Chair

Date