



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/20/0899

Re: Property at 4C Queen Street, Arbroath, DD11 2BJ (“the Property”)

Parties:

Mrs Loris Anne McEwan, East Jennieswell Cottage, Jennieswell Cottage, Woodville, Arbroath, DD11 3RJ (“the Applicant”)

Miss Joanne Simpson, 4C Queen Street, Arbroath, DD11 2BJ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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 with evidence of service;
 - a copy section 11 Notice;
 - a copy of the Respondents’ rental statement;
 - letter from local council regarding anti-social behaviour dated 24 July 2019;and

- email from a neighbour at the property, to the Applicant, raising concerns of on-going anti-social behaviour by the Respondent, dated 20 May 2020
- 3. Mr Beattie from Messrs Thorntons Law LLP appeared on behalf of the Applicant. The Respondent attended on her own behalf. The Respondent had a supporter with her, Jade Fleming, a social worker.
- 4. Service of today's hearing had been made sheriff officers on 1 July 2020.
- 5. Further documents had been submitted by the Applicant's agent including an updated rent statement; and a copy of a handwritten letter from the Respondent (undated) to the Applicant advising that she would not be attending today's hearing, and that she was not disputing the application or the order that was sought. The Respondent confirmed that she had written this letter to the Applicant.

Hearing

- 6. The Applicant's agent advised that he was seeking an order for recovery of the possession of the property under the grounds, 11, 12 and 14 (breach of the tenancy agreement, rent arrears for 3 months; and anti-social behaviour).
- 7. The rent arrears were still outstanding and had increased. As at 15 August 2020 rent arrears would be £3,920. The arrears were in excess of one month's rent and had been outstanding for more than 3 months. He advised that there had also been allegations of anti-social behaviour and he referred to the recent email submitted in May 2020 from a neighbour at the property raising concerns. He advised that there had also been breaches of the tenancy agreement, in relation to the failure to set up a standing order to pay rent, the anti-social behaviour and smoking at the property.
- 8. The Respondent accepted that there were rent arrears. She advised that the arrears had accrued due to hours at her work being reduced because she was pregnant. She advised that there were no outstanding benefits issues causing the rent arrears. She did dispute however the anti-social behaviour and also, the breach of the tenancy agreement as far as the smoking was concerned.
- 9. The Respondent advised that she was not opposing the Applicant's application for eviction.
- 10. The Applicant's agent advised that since Ground 12- rent arrears was not opposed by Respondent, he would not insist on seeking eviction under the additional Grounds 11 and 14.

Findings in Fact

11. The Tribunal found the following facts established:-
12. There existed a private residential tenancy between the Applicant and the Respondent.
13. The tenancy had commenced on 14 August 2018.
14. Condition 8 of the Tenancy Agreement provides that the rent for the property is £420 per month payable in advance.
15. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 23 January 2020. It confirmed that proceedings would not be brought until 24 February 2020. It had been served by sheriff officers on 23 January 2020. The grounds in the notice to leave were Grounds 11, 12 and 14. Ground 12 being "you are in rent arrears over three consecutive months".
16. That there had been on-going rent arrears for in excess of three consecutive months as at 23 January 2020
17. That there were rent arrears outstanding at today's date totalling at least one month's rent due under the tenancy agreement.
18. The arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
19. 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

20. 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 found that one of the grounds in schedule 3 of the Act applies.
21. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
22. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."
23. Sub paragraph 3 provides that the Tribunal may find that the ground named in 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.
24. The Respondent did not oppose the application. The Respondent accepted that there were rent arrears for the property. She did not dispute the level of

arrears; she advised that she could not afford to pay the rent when her working hours had reduced. She advised that there were no outstanding benefit issues affecting her rent arrears.

25. The arrears had increased since the application had been lodged. The rent arrears were outstanding for over three months. The arrears did not appear to have been caused by a delay in the payment of benefits. It appeared therefore that the terms of sub-paragraph 3 were met. I was therefore prepared to find that the ground in sub paragraph 1 applies. I therefore grant an eviction order in terms of ground 12 rent arrears.

Decision

26. The Tribunal grants an order in favour of the Applicant against the Respondent 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

07/08/2020

Legal Member/Chair

Date