



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/19/1040

Re: Property at Farraline, 2A Paton Street, Inverness, IV2 4SN (“the Property”)

Parties:

Mrs Claude Beirne, 2 High Shore, MacDuff, AB44 1SL (“the Applicant”)

Mr Richard Bowler, Ms Niamh Wilkinson, Farraline, 2A Paton Street, Inverness, IV2 4SN (“the Respondents”)

Tribunal Members:

Helen Forbes (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.

Background

This is an application for an eviction order dated 3rd April 2019 under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”).

The Applicant seeks an eviction order in relation to the Property against the Respondents on ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant provided copies of the Private Residential Tenancy agreement, which commenced on 29th November 2018; notice to leave as required under section 52(3) of the 2016 Act; and notice to the local authority as required under section 56(1) of the 2016 Act. The documents had been correctly and validly prepared in terms of the 2016 Act and the procedures set out in that act had been correctly followed and applied.

The Tribunal had before it certification that the Respondents were served with the application and notification of the Case Management Discussion by Sheriff Officers on 27th May 2019.

On or around 14th June 2019, the Respondents lodged written representations. On or around 21st June 2019, the Applicant lodged a written submission, dated 20th June 2019.

The Case Management Discussion

A Case Management Discussion took place on 27th June 2019 at the Spectrum Centre, 1 Margaret Street, Inverness. The Applicant was present and she was accompanied by Nicole Schneider Drummond, who acted as a supporter in terms of the Rules. The Respondents were not present or represented. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and notice of the hearing given, and that it was appropriate to continue with the hearing in the absence of the Respondents in terms of Rule 29.

The Tenancy commenced on 29th November 2018. The rent per month was £650. The Respondents paid £200 in advance towards the rent. They then made payment of two months' rent on 30th November 2018. No further rent has been paid. The Respondents are now five months in arrears of rent. The Applicant has not had any contact from the Respondents since the action was raised. There had been some disagreement between the parties concerning visits and alleged visits to the Property by the Applicant. There was some correspondence between the parties regarding issues in relation to repairs said to be required to the Property.

In their written submission, the Respondents stated that they had asked the Applicant if they would be allowed to claim Housing Benefit and had not received a response from the Applicant. They lodged copies of letters said to have been sent by post to the Applicant. Two of the letters requested permission from the Applicant to allow the Respondents to apply for Housing Benefit. The Applicant said she did not receive the letters and was surprised that they had been sent by post, when parties had agreed that email was the best way to correspond. She said it would be unusual for multiple letters sent by post to go missing. The Applicant pointed out that she had suggested in her emails of 3rd and 5th March 2019, which had been provided to the Tribunal with the application, that the Respondents may wish to find out if help was available by way of benefits etc. from the council. She said it would not be normal for the landlord to give permission as requested by the Respondents. The Respondents stated that they had checked and were entitled to Housing Benefit. They also complained in their representations about the state of the Property.

Findings in Fact

1. The parties entered into a Private Residential Tenancy agreement on 29th November 2018 with an agreed monthly rent of £650.
2. The Respondents have been in arrears of rent for three or more consecutive months.

3. At the date of the Case Management Discussion, the Respondents are in arrears of rent by an amount greater than the amount payable as one month's rent.
4. No application for, or payment of, a relevant benefit appears to have been made.

Reasons for Decision

Ground 12 of schedule 3 of the 2016 Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day of three or more consecutive months; and (3) the Tribunal is satisfied that the tenant's 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.

The Tribunal is satisfied that ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. In terms of section 51(1) of the 2016 Act, the Tribunal must issue an eviction order if it finds that one of the eviction grounds named in schedule 3 applies.

Decision

An eviction order is 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.

H. Forbes

Legal Member/Chair

27th June 2019

Date