



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/18/1099

Re: 25A Kilgreggan View Greenock PA15 3 JA (“the Property”)

Parties: Patrick Gillen, 116 Bawhirley View Greenock, PA15 5LU

(“the Applicant”)

Miss Jacqueline Jenkins, 34 Irwin Street Greenock PA15 2NP

(“the Respondent”)

Tribunal Members: Jan A Todd

(Legal Member)

Decision (in absence of the Respondent*)

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

- **Background**

This was the third CMD for this application for an order for possession and Eviction in relation to the Property. The first CMD was held on 28th August 2018 and the outcome of that hearing (where the respondent was not present and the Applicant was represented by Mr Gisbey and Mr Leitch both from Homefinders) was that the Applicants were advised they required to produce a copy of the Notice to Leave in the correct form set out in the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017. The Tribunal also advised that the applicant required to produce the relative recorded delivery slip for delivery of the Notice to Leave and a copy of the e-mail to Inverclyde Council sending them the Section 11 Notice and evidence that the arrears of rent was not due to the failure or delay in the payment of relevant benefit.

The Case was continued to another CMD due to be held in Glasgow Tribunal Centre on 9th October 2018. However no parties appeared despite both parties being served

with papers. The outcome of that CMD was that due to the failure of the Applicant to appear or be represented the case was dismissed.

On 25th October the Applicant's representative Derek Leitch sent the Tribunal an email dated 25th October advising that he wished to apply for a recall of the Decision to dismiss the application and explained that the failure to appear was due to confusion over the location of the CMD. The Convener reviewing the application for recall decided in the whole circumstances it was reasonable to allow the recall of the Tribunal's decision to dismiss the application.

At today's CMD the Applicant was represented by Mr Campbell Gibsey who advised that the Applicant did still wish to pursue the order for possession because although it appeared the tenant had left the property, and the papers for this CMD were served on the Respondent by Sheriff Officers at the address stated above, Mr Gibsey advised that the Applicant believed there was still furniture in the Property and the Respondent had never returned the keys so the Applicant wanted the order to ensure vacant possession. The Respondent did not appear and has not made any written representations.

The Convener explained that there were some outstanding pieces of evidence asked for after the first CMD which the Tribunal still required in order to be satisfied the grounds of the action were met. The Convener noted that a Notice to Leave dated 1st May 2018 had been sent into to the Tribunal after the first CMD and was in the proper format, advising the Respondent an application would not be submitted for an eviction order prior to the 3rd June 2018. In addition at the CMD today Mr Gibsey submitted a copy of the e-mail from Homefinders to Inverclyde Council enclosing the Section 11 notice required in terms of the Act. Mr Gibsey also advised that neither he, nor the Applicant believed the tenant's rent arrears were the result of a failure or delay in payment of benefits, he advised when they had run a credit check before the lease was entered into it had shown she was working.

The Convener then asked if there was evidence proving when the notice to leave had been served on the Respondent in order to confirm adequate notice as required in the Act had been given. Mr Gibsey advised he was not sure how delivery was effected initially believing it would be by recorded delivery but he did not have any proof of this in his papers. Two adjournments were granted to allow Mr Gibsey to call his office and speak to his colleague Mr Leitch. After phoning and speaking to his colleague Derek Leitch he confirmed that Mr Leitch advised he had hand delivered the Notice to the Tenant when he was doing an inspection of the Property. He then obtained as further evidence of the date this was done a screen shot of the office diary showing an inspection at the Property on 1st May 2018.

Findings in Fact

- The Applicant and the Tenant had entered into a lease for the Property. The commencement date is 18th January 2018. The Rent payable is £350 per calendar month.
- The Applicant is the Landlord of the Property.
- The Lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016.

- The lease in clause 4 narrates that all communications between Landlord and Tenant including Notices that are required to be served are to be in writing and will be served by hard copy by personal delivery or recorded delivery.
- The Applicant served a Notice to Leave dated 1st May 2018 on the Respondent by personal hand delivery on 1st May 2018
- The Notice to Leave is in the format required by the Act and gives due notice of over 28 days, as the date referred to in the notice as to when an action can be raised is 3rd June 2018 more than the 29 days required in the Act.
- The Reason for eviction stated in the Notice to Leave is there are over 3 month rent arrears.
- The Applicant has obtained an order from the Tribunal in respect of a separate application for rent arrears in the sum of £2700 more than 3 months rent arrears.
- S11 notice has been served on Inverclyde Council

- **Reasons for Decision**

- The Applicant has shown that he has served a Notice to Leave in the correct form on the Respondent by personal delivery giving more than 29 days notice all in accordance with the requirements of S52 and S62 of the Act.
- The Ground of eviction is that the tenant has been in arrears of rent for over 3 months in terms of Ground 12 of Schedule 3 of the Act. The Applicant stated in the application that the Respondent had paid only one months' rent since entering the property on 18th January 2018. At today's hearing the Applicant's representative confirmed the Applicant now has an order for payment of rent arrears from the Housing and Property Tribunal for £2700. The Tribunal accepted this as evidence that the eviction ground was met. The Tribunal also accepted Mr Gibsey's evidence that there was no reason to believe the failure to pay was caused by a failure or delay in receiving benefit. There were no representations from the Respondent to counter this evidence.
- The Eviction ground is stated in the Notice to Leave and is Ground 12 of Schedule 3 of the Act, namely that the tenant is in arrears of rent and on the day the Tribunal considers the case the arrears were at least one month's rent and the tribunal is satisfied that the arrears are not a delay or failure in the payment of a relevant benefit.
- The S11 notice has been served on the appropriate Council.
- All the requirements of the Act having been complied with it is appropriate the order for eviction should be granted.

- **Decision**

An order for eviction of the Respondent and all her possessions from the Property is granted.

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.

Jan A Todd

Legal Member/Chair

22/2/19

Date