



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/1273

Re: Property at 31 Pitreavie Court, Hamilton, ML3 8DD (“the Property”)

Parties:

Miss Jane Kinnaird, 17 Kirk Lane, Law, Carluke, ML8 5WH (“the Applicant”)

Mr Anthony Sweeting, 31 Pitreavie Court, Hamilton, ML3 8DD (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Miss E Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent

Background

1. This is an application dated 27th May 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 12 of the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant’s representative included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 16th February 2018, copy Notice to Leave dated and served on 7th July 2020, copy section 11 notice served on 27th May 2021, rent schedule, and copy pre-action requirement letters dated 30th March and 7th April 2021.
2. Notification of the application and a Case Management Discussion set down for 3rd August 2021 was served upon the Respondent by Sheriff Officers on 29th June 2021.

Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 3rd August 2021. The Applicant was not in attendance and was represented by Ms Euphemia Matheson, Solicitor. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. Ms Matheson moved the Tribunal to grant the order sought as ground 12 was met, in that the arrears exceeded one month’s rent at the day of the CMD and the Respondent had been in arrears of rent for a continuous period up to and including the day of the CMD for a period of three or more consecutive months. The Respondent was in arrears of more than three months’ rent when the Notice to Leave was served.
6. The rent schedule showed that the rent arrears did not appear to be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. No formal agreement had been entered into by the parties regarding the payment of arrears. The Applicant’s letting agent had written to the Respondent on 30th March and 7th April 2021 but there had been no response from the Respondent. Ms Matheson did not have any details of the Respondent’s personal circumstances.

Findings in Fact and Law

7.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 16th February 2018 at a monthly rent of £395.
 - (ii) The Respondent has been in arrears of rent for three or more consecutive months.
 - (iii) Notice to Leave has been served upon the Respondent.
 - (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month’s rent.
 - (v) The Respondent’s rent arrears are not due to a delay or failure in the payment of a relevant benefit.
 - (vi) The pre-action requirements for private residential tenancies have been met.
 - (vii) It is reasonable to grant an eviction order.

Reasons for Decision

8. Ground 12 of Schedule 3 of the 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 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.
9. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
10. The Tribunal is satisfied that Ground 12 has been established.
11. 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. The pre-action requirements were met by letters dated 30th March and 7th April 2021.
12. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, amounting to £3485, that the Respondent had stopped making any attempt to pay towards the rent or arrears in recent months, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
13. Unfortunately, the Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

14. An eviction order in respect of the Property is granted against the Respondent.

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. F

Legal Member/Chair

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3rd August 2021
Date