

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1344

Re: Property at 20 Hebenton road, Elgin, Moray, IV30 4EP (“the Property”)

Parties:

Mr Thomas Marsh, 8 Corrichie Place, Banchory, AB31 5WP (“the Applicant”)

Miss Karen Girvin, 20 Hebenton Road, Elgin, Moray, IV30 4EP (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal 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

This is an application dated 2nd May 2019, made in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an eviction order in respect of the Property on Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant lodged a copy of the tenancy agreement between the parties, which commenced on 16th December 2018. The Applicant also lodged the following: copy Notice to Leave, in terms of section 52(3) of the Act dated 28th March and served by email on 29th March 2019; copy notice to the local authority as required by section 56(1) of the Act; correspondence between the parties; a rental statement; and Title Sheet for the Property (MOR1180). The relevant documents had been correctly and validly prepared in terms of the Act and the procedures set out in the Act had been correctly followed and applied.

By email dated 17th July 2019, the Respondent informed the Tribunal that she was unable to attend the Case Management Discussion set down for the following day, as she was in hospital due to complications following planned surgery.

The Case Management Discussion

The case called for a Case Management Discussion ("CMD") on 18th July 2019 at Elgin Library, Cooper Park, Elgin. The Applicant was present and accompanied by Audrey Pope, Residential Property Manager, and Michelle Rourke, Residential Lettings Manager, both of CCL Property. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules as intimation of the CMD had been made upon the Respondent by Sheriff Officers on 13th June 2019. The Respondent had not made any written representations to the Tribunal.

The rent for the Property was £750 per month. No rent was paid by the Applicant for the months of January and February 2019. Thereafter, the Respondent was in receipt of Housing Benefit, which was paid directly to the Applicant by the local authority. The Housing Benefit did not cover the full rent. The last payment of Housing Benefit, in the sum of £403 was made on 31st June 2019. At the date of the CMD, the arrears of rent amounted to £2,996.40.

The Applicant said he had been understanding of the Respondent's situation and had tried to engage with her in order to put a payment plan in place, to no avail. He was no longer able to contact the Respondent.

Findings in Fact

1. The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 16th December 2018.
2. The rent for the Property was £750 per month.
3. The Respondent has been in arrears of rent for three or more consecutive months.
4. At the date of the Case Management Discussion, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
5. The Respondent's being in arrears over three or more consecutive months is not due to a delay or failure in the payment of a relevant benefit.

Reasons for Decision

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 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 Act, the Tribunal must issue an eviction order in the circumstances.

Decision

An eviction order is granted against the Respondent in favour of the Applicant.

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.

Ms H Forbes

Legal Member/Chair

18th July 2019

Date