



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/19/1558

Re: Property at 31 Birch Road, Clydebank, G81 3PD (“the Property”)

Parties:

Mrs Karen Muir, 16 Morar Drive, Clydebank, G81 2YB (“the Applicant”)

Mr Grant Gray, 31 Birch Road, Clydebank, G81 3PD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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 email evidence of service
 - a copy section 11 Notice with email evidence of service
 - a copy of the Respondents rent statement
3. Ms Morrison from Messrs T C Young appeared on behalf of the Applicant. There was no appearance by the Respondent. Ms Kelly also attended as an observer.

4. Notice of the Hearing had been served on the Respondent by sheriff officers on 13 June 2019. As I was satisfied that the Respondent had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in his absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. She confirmed that the notice to leave had been served by email. She provided an updated rent account and advised that the current level of arrears were £3850. The last rental payment received was on 21 December 2018.
6. The notice to leave sought eviction under rent arrears for 3 consecutive months ground.
7. She advised that the current level of arrears were £3850. She advised that they had served the notice to leave due to the rent arrears. The Applicant had attempted to get the Respondent to pay the rent and arrears, however they had been unsuccessful in getting him to engage with them. She advised that the Applicant did not consider that the arrears were due in part or wholly due to a delay in benefits.
8. The Applicants' agent advised that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and she did not consider that there were due to a failure or delay in the payment of relevant benefit.
9. She advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

10. The Tribunal found the following facts established:-
11. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 10 March 2018.
12. Clause 8 of the Tenancy Agreement provides that the rent for the property is £550 per calendar month. It is payable in advance and due on the 10th day of each month.
13. The notice to leave was addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 10 April 2019. It confirmed that proceedings would not be brought until 11 May 2019. It had been sent to the Respondent by email on 10 April 2019. The notice to leave advised the tenant that he was in arrears of rent.

14. That rent arrears appeared to have been outstanding since 10 January 2019.
15. There were rent arrears outstanding at the date of the application in May 2019 which totalled at least one month's rental due under the tenancy.
16. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
17. 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

18. 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.
19. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
20. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
21. Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
22. I found that the necessary paperwork had been prepared and served on the Respondent and the local authority. I found that the terms of sub-paragraph 2 were met. Accordingly, I consider that I must find that the ground in sub paragraph 1 applies; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

23. 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.

M Barbour

Legal Member/Chair

19.7.14

Date