



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/19/1760

Re: Property at 48b Mauchline Road, Hurlford, Kilmarnock, KA1 5DF (“the Property”)

Parties:

Mrs Marion Maxwell, 23 Main Street, Craigie, Kilmarnock, KA1 5LY (“the Applicant”)

Mr Deklan Younger, 48b Mauchline Road, Hurlford, Kilmarnock, KA1 5DF (“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 Respondents for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice
 - a copy of the Respondents rental statement
 - email from the Respondent

3. The Applicant's agent Mr Telfer, from Letts Agree Sales and Lettings Ltd appeared on behalf of the Applicant. There was no appearance by the Respondent.
4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers on 2 July 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' representative referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave and evidence of service of it, the emails from the Respondent about non-payment of his rent and rent account statement. He confirmed that the notice to leave had been served by recorded delivery. He advised that the Respondent was aware of the fact that he had not been paying his rent, and that he had received an email about 6 weeks from the Respondent advising that he would be leaving the property, however he was still there.
6. He advised that the notice to leave sought eviction under Ground 12, rent arrears for a period of more than 3 months.
7. He advised that the current level of arrears were £2,958.78. He advised that there had been arrears on the rent account for a period exceeding three consecutive months.
8. He did not consider that the arrears were due in part or wholly due to a delay in the payment of relevant benefits, and he submitted that the Respondent was working.
9. The Applicants' representative advised that the Respondents were in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and he did not consider that there were outstanding benefits issues causing the arrears. He 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 6 July 2018.
12. The tenancy was for the Property 48B Mauchline Road, Hurlford.
13. The tenant is Deklan Younger.

14. The landlord is Marion Maxwell.
15. 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 6th of each month.
16. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 19 February 2019. It confirmed that proceedings would not be brought until 22 March 2019. It had been served on the Respondent by recorded delivery post on 19 February 2019. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
17. That rent arrears had been outstanding since 6 January 2019.
18. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
19. The arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
20. 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

21. 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.
22. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
23. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
24. 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.
25. I found that the terms of sub-paragraph 2 were met and accordingly, I consider that I must find that the ground in sub paragraph 1 applies; I have found the other statutory requirements to have been complied with; and

therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

26. 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.

Melanie Barbour
Legal Member/Chair

12. 8. 19

Date