



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

Chamber Ref: FTS/HPC/EV/21/1445

Re: Property at Flat 2/1, XXX, Cathcart, Glasgow, G44 XXX (“the Property”)

Parties:

Nevis Properties Limited, 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)

Miss Kellyann Heffernan, Flat 2/1, XXX, Cathcart, Glasgow, G44 XXX; and Mr Lee Robertson, 31 McTaggart Crescent, Motherwell, ML1 4ZH (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the First-named Respondent.

By application, received by the Tribunal on 15 June 2021, the Applicant sought an Eviction Order against the First-named Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the First-named Respondent has been in arrears of rent for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between Places for People Homes Limited and the First-named Respondent, commencing on 14 December 2018 at a rent of £650 per month. The Second-named Respondent signed the Agreement as a Guarantor for, *inter alia*, payment of the rent by the First-named Respondent. The Applicant also provided the Tribunal with a Rent Statement showing arrears as at 1 June 2021 of £7,800, and a Notice to Leave, sent to the First-named Respondent by email on 25 November 2020.

The Notice to Leave stated that an application to the Tribunal for an Eviction Order would not be made before 31 May 2021.

In the application, the Applicant stated that on or around 4 September 2020, Places for People had sold the Property and assigned their interest in the Tenancy Agreement to the Applicant. The First and Second-named Respondents had been advised of this. At this point, the rent was in arrears to the extent of £3,396.01. At the date of the application, the arrears were £7,150, being the rent due for July, August, September, November and December 2020 and for January, February, March, April and May 2021. This figure did not include the rent that had fallen due on 1 June. The Tribunal had, in an earlier application, made an Order for Payment against the Respondent for £5,200, for the period to 1 February 2021.

On 3 August 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 24 August 2021. The First-named Respondent submitted written representations on 11 August 2021. She contended that the Second-named Respondent had not been advised of the sale until there had been a dispute over rent, so had no liability as Guarantor after the date of the sale, that repairs to the front door of the Property had left it without a chain or peep-hole, that there was no Gas Safety Certificate, and that there had been no working smoke alarm for some time, as she had disconnected it because it was unsafe. She had been scared of the gas engineer who had carried out some repairs and thought that it would be the same person that would be used for the Gas Safety Certificate. She wanted to find a new home not too far away from her family, as she needed them nearby due to her health, but the market in that area was very small.

The Second-named Respondent made no representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 6 September 2021. The Applicant was represented by Mr David Boag of Harper Macleod LLP, solicitors, Glasgow. Neither Respondent was present or represented.

Mr Boag told the Tribunal that no rent had been received since the date of the application. The arrears now stood at £9,100. He said that the First-named Respondent's representations did not deal at all with the central issue, which was the non-Payment of rent. The Applicant stated that the First-named Respondent had not agreed to scheduled visits by contractors and that, as no rent at all had been paid since October 2020, it was reasonable for the Tribunal to issue an Eviction Order.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 12 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the tenant has been in arrears for

three or more consecutive months and that the Tribunal may find that Ground 12 applies, if, for three or more consecutive months the tenant has been in arrears of rent and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal noted that the First-named Respondent had paid no rent whatsoever since October 2020. She had, in her written representations, referred to alleged failures by the Applicant to ensure the Property meets the repairing standard, but had, on her own admission, disconnected the smoke detection system and was not prepared to allow access to a contractor in connection with the renewal of the Gas Safety Certificate. She had provided photographs which indicated that the front door might benefit from a minor repair and a photograph showing the site of where there may previously have been a smoke detector.

The view of the Tribunal was that the First-named Respondent had made no effort to pay any rent since October 2020 and at the point of that one-off payment the rent had already been substantially in arrears. The issues which she had raised in her written representations, when her own actions and her refusal to allow access were taken into account, would not have justified an abatement of rent and it appeared to the Tribunal that she had simply decided to stop paying rent, with no reasonable justification for having done so. The rent had been in arrears for three or more consecutive months, and was currently fourteen months in arrears, when the amount of the Order for Payment made by the Tribunal on 17 May 2021 was included (Chamber ref: FTS/HPC/CV/20/2641). The view of the Tribunal was that, in all the circumstances of the case and taking into account all the evidence before it, it was reasonable to issue an Eviction Order.

The Decision of the Tribunal was unanimous.

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.

George Clark

Legal Member/Chair

6 September 2021

Date