

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2204

Re: Property at 68 Ferguson Court, Bucksburn, Aberdeen, AB21 9AG (“the Property”)

Parties:

Mr Donald Marshall, Mrs Pauline Marshall, 12 Main Street, Inver, Tain, Ross-shire, IV20 1SB (“the Applicant”)

Mr John Martin, 68 Ferguson Court, Bucksburn, Aberdeen, AB21 9AG (“the Respondent”)

Tribunal Members:

Petra Hennig McFatridge (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.

Background

The Applicants’ Representative Carly Stewart made an application under Rule 109 of The First – tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules) for an eviction order for the property in terms of S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

The following documents have been lodged with the application:

copy Private Residential Tenancy Agreement dated

copy Notice to Leave dated 5 April 2019

copy S 11 Notice

copy quotation from Estate Agent dated 11 July 2019

copy Schedule of rent arrears

copy updated Schedule rent arrears up to and including 3 September 2019

copy email dated 8 April 2019 to tenant

copy emails from Andrew Barket to Carly Stewart dated 10 July 2019, 3 July 2019, 25 June 2019

copy emails from Applicant to Carly Stewart dated 4 July 2019 and 6 June 2019

A Case Management Discussion (CMD) was fixed for 8 October 2019 at 14.00 and both parties were notified of this. The service of the case papers and details of the CMD was carried out by Sheriff Officers on 30 August 2019.

The Tribunal is thus satisfied that the Respondent had due notice of the application, the amendment and the notification of the CMD details. These included the statement that the tribunal may make a decision at a CMD.

Prior to the CMD the Applicant's Representatives, Aberdeen Considine, lodged an application to amend the sum sued for in the conjoined civil action under reference HPC/CV/19/2206 for the same parties and property to £3,500 as per their email to the Tribunal dated 16 September 2019. This was allowed in terms of Rule 14A of The First – tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules). The decision was intimated to the parties.

No representations were received from the Respondent.

The Case Management Discussion

The Respondent did not attend the CMD and had not made any representations and had not contacted the Tribunal. At the CMD the Applicants' Representative Ms Stewart attended on behalf of the Applicants and moved the amended application.

She stated that the reason the Notice to Leave was given was that at the time the Applicants had decided to put the property on the market. They only obtained a sale quote after the Notice to Leave had been served as they wished to ensure they would have the property back in order to sell it. They have since contacted the property department of Aberdeen Considine to obtain a sale quote and put this in motion.

She also explained that as of 1 October 2019 the rent arrears outstanding were £3,500 as no payments had been received since March 2019 and thus rent of £500 per month for 7 months was now due. She reiterated that the application had been made on Grounds 1 and 12 and although Ground 12 had not been stated in the Notice to Leave, this should be included in terms of S 52(5)(b) of the 2016 Act as the rent arrears had arisen since the Notice to Leave was served and amounted now to 7 months rent and the sum of £3,500. At the time the Notice to Leave had been issued there had been insufficient arrears to qualify for that Ground. The Respondent had not returned the keys but had also not been in contact at all. The rent arrears were intimated to him to the email stated in the tenancy agreement and by letter to the property, on the last occasion on 16 September 2019. Visits had been carried out in June and July by staff from the property department to discuss matters but the Respondent was not at home at these times. She advised the Notice to Leave had been served by email to the email stated in the tenancy agreement and by letter and a member of staff had visited the Respondent there after and confirmed this had been received as previously stated in her email to the Tribunal on 7 August 2019.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement for the property on 1 August 2018
2. Rent of £500 per calendar month was payable.
3. From 1 April 2019 to the date of the CMD no payments were made
4. At the date of the CMD 8 October 2019 the sum of £3,500 in rent arrears is due and outstanding
5. A Notice to Leave was served on the Respondent on 8 April 2019 stating as the date proceedings could be raised 3 July 2019 and giving as the ground for eviction that the landlord intends to sell the Let Property
6. The Respondent has not handed back the keys and the property still holds his belongings
7. The Applicants are entitled to sell the property
8. The Applicants have instructed the sale of the property and obtained a sale quotation from Aberdeen Considine for that purpose.

Reasons for decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Landlord intends to sell

1 (1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, and

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph

(2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

Rent arrears

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by 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 payable as one month's rent under the tenancy on that day, and

(ii) 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

(b) 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 Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware

that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

The Tribunal found that Ground 1 of Schedule 3 of the 2016 Act applies in this case.

The Tribunal was satisfied on the basis of the emails from the Applicant to his solicitor and the sale quotation for the property dated 11 July 2019 that the Applicants are in the process of putting the property up for sale once it has been vacated. The Tribunal accepts that the Applicants are entitled to sell the property. The Applicants had served a valid Notice to Leave on the Respondent with the required 84 day notice period.

The Tribunal thus considered that in terms of Ground 1 of Schedule 3 of the Act the Tribunal the ground applies and thus in terms of S 51(1) must issue an order for eviction.

The Tribunal found that Ground 12 (1) and (2) of Schedule 3 of the 2016 Act applies in this case and that in terms of S 52 (5) of the 2016 Act this can be considered as a Ground for eviction in these proceedings.

The application clearly set out that the Ground was to be considered in the application and provided a reason why the Ground was not included in the Notice to Leave at the time this was served. The application included a statement of arrears showing these have arisen after 1 April 2019 and increased consistently since the Notice to Leave had been served. The application had been accepted by the Tribunal on these terms.

There was no valid defence to the action. It is not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent had accumulated rent arrears over 7 months. The Tribunal on the basis of the payment printout and the oral evidence of the Applicants' Representative accepted that the arrears on the day the Tribunal considers the application on its merits are in excess of one month's rent as the arrears are £3,500 and the monthly rent is £500. The Respondent has not provided any information that would indicate that the arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 and Ground 12 (1) and (2) of Schedule 3 of the Act

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.

Petra Hennig-McFatrige

Legal Member/Chair

8th October 2019

Date