



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/18/2672

Re: 30 Tower Avenue, Barrhead, G78 1DN ("the Property")

Parties:

Stephen Porter, 9 Hillside Grove, Barrhead, G78 1HB ("the Applicant")

Domino Estates, Pavillion 1, Finneston Business Park, 12 Minerva Way, Glasgow, G3 8AU ('The Applicant's Representative')

Aisha Zeeshan, formerly residing at 30 Tower Avenue, Barrhead, G78 7DN whose present whereabouts are unknown ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules. The application was dated 9th October 2018. The application states that the Tenant is in rent arrears over three consecutive months. Rent has been in arrears since 1st June 2018. Attempts have been made to work out a payment plan since then, but the Tenant has not made the agreed payments. At the time of the application payment has not been made since 17th July 2018.

1.2 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 24th January 2018.

- A rent statement for the period 16th June 2016 to 1st October 2018 which showed the outstanding rent to be £2550.
- Notice to Leave dated 3rd September 2018 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 2nd October 2018.
- A copy of the email to the Tenant dated 3rd September 2018 attaching the Notice to Leave.
- Email chain from Domino Estates to the Tenant demonstrating that the Notice to Leave had been sent to the Tenant's correct email address.
- Section 11 Notice addressed to East Renfrewshire Council.

2. Case Management Discussion

This case called for a Case management Discussion (CMD) at 10.00 am on 23rd April 2019 at the Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT.

The Applicant did not attend the CMD but his representative, Rosalind Phillips, Head of Property Management of Domino Estates, attended on his behalf.

The Respondent did not attend in the CMD. The Respondent had been served with notice of the CMD by advertisement on the First- tier Tribunal for Scotland Housing and Property Chamber website between the dates 18th March 2019 and 3rd April 2019.

No written responses had been received from the Respondent.

3. The Tribunal identified with the applicant's representative the following agreed facts:

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 7th February 2018.

3.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicant's title deeds being Land Certificate REN105742. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 28th February 2003.

3.4 The rent due in terms of the tenancy was £695 per month.

3.5 The outstanding rent as at 1st October 2018 amounted to £2550.

4. Oral Evidence

Rosalind Phillips advised the Tribunal that:-

4.1 The Respondent had personally vacated the Property in early December 2018 but she did not remove her belongings and personal possessions. They still remain in the Property. The Respondent had advised Domino Estates that she would hire a van to remove her possessions but never did so.

4.2 The Respondent had sent Domino Estates an email advising that she had moved to Edinburgh with her mother and her address was 4 South House Road, Edinburgh, EH17 8DZ. The Tribunal had instructed sheriff Officers to serve papers on the Respondent at that address but they had advised that she no longer resided there.

4.3 The Respondent has made no further rent payments. Therefore the outstanding rent as at 23rd April 2019 amounted to £6550.55.

4.4 The Respondent was in employment as she had no reason to believe that the rent arrears was due to a delay or failure in the payment of housing benefit.

5. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The ground stated was that the Tenant is in rent arrears over three consecutive months. Rent has been in arrears since 1st June 2018. Attempts have been made to work out a payment plan since then, but the Tenant has not made the agreed payments. At the time of the application payment has not been made since 17th July 2018. The Tribunal accepted that this ground is Ground 12 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The said rent statement had been produced.

(ii) a copy of the notice to leave given given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 3rd September 2018 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 2nd October 2018.

The Tenancy commenced on 1st February 2018. As at 3rd September 2018 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on the fault ground 12 of Schedule 3 of the 2016 Act and therefore 28 days notice was required. The Landlord emailed the Notice to Leave to the Tenants on 3rd September 2018. Clause 4 of the Lease permits Notices to be sent by email.

In terms of section 54(2) of the 2016 Act the Notice begins on the day the Tenant received the Notice and expires on the day falling 28 days after it begins. The date it

expired was 1st October 2018. The Notice to Leave correctly gave the Tenants a minimum of the required 28 days notice.

Evidence of delivery of the Notice to Leave to the Tenant had been produced to the Tribunal.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided. Rosalind Phillips showed the Tribunal a copy of the email to East Renfrewshire Council sending them the Notice.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

6. Decision

The Tribunal found that the Applicant had met the requirements of Ground 12(2) of Schedule 3 The Private Residential Tenancies (Scotland) Act 2016 for the following reasons:

6.1 The outstanding rent due by the Respondent at the date of the CMD was £6550.55, being more than one months rent.

6.2 The last rent payment had been made on 17th July 2018, consequently the Respondent had been in arrears of rent for a continuous period of three or more consecutive months.

6.3 The Tribunal accepted the evidence of Rosalind Philips to the effect that the Respondent was in employment as was not in receipt of benefits and therefore they were satisfied that the rent arrears was not due to a delay or failure in paying a relevant benefit.

Consequently the Tribunal determined that the order for possession of the Property be granted.

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.

J.Taylor

Legal Member

23rd April 2019