



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/19/3424

Re: Property at 6 Froghall Terrace, Aberdeen, AB24 3JJ (“the Property”)

Parties:

Lord Innes Catto, 15 Chesterfield Hill, London, W1J 4BP (“the Applicant”)

Peeble Mountain Properties Ltd, Merchants House, 87 Waterloo Quay, Aberdeen, AB11 5DE (“the Applicant’s Agent”)

Miss Kimberly Baff, 6 Froghall Terrace, Aberdeen, AB24 3JJ (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

- 1 By application dated 25th October 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Notice to Leave dated 6 August 2019 stating that proceedings for possession will commence no earlier than 6 September 2019 and citing grounds 11 and 12, together with email delivery;
 - (ii) Private Residential Tenancy Agreement dated 18th March 2019;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council;

- (iv) Email correspondence between the Applicant's Agent and Respondent; and
 - (v) Rent Statements.
- 2 By Notice of Acceptance of Application dated 7th November 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 13th January 2020.
- 3 On ?? the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

Case Management Discussion

- 4 The Case Management Discussion took place at Aberdeen Sheriff Court on 13th J

Findings in Fact

- 5 The parties entered into a Private Residential Tenancy Agreement in respect of the property.
- 6 The tenancy was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 7 In terms of the said Tenancy Agreement the Respondent agreed to make payment of rent at the rate of £550 per month.
- 8 No rent has been paid by the Respondent since the commencement of the tenancy on 1st April 2019.
- 9 On 6th August 2019 the Applicant's Agent emailed a Notice to Leave to the Respondent. The Notice to Leave cited grounds 11 and 12 and confirmed that proceedings would not be raised any earlier than 6th September 2019.
- 10 The Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and complies with provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
- 11 As at the date of service of the Notice to Leave arrears in the sum of £2750 were outstanding.
- 12 As at the date of the Case Management Discussion arrears in the sum of # were outstanding.
- 13 The rent account has been in arrears for three or more consecutive months;

- 14 The rent arrears are not a result of any delay or failure in the payment of housing benefit.

Reasons for Decision

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers.
- 13 The Tribunal noted that the Applicant sought recovery of possession under grounds 11 and 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon the Respondent confirming the Applicant was relying up those grounds as part of the proceedings against her.
- 14 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. In accordance with the provisions of that ground under Schedule 3 of the 2016 Act the Tribunal must grant an order for repossession where:-
- (i) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater one month's rent under the tenancy on that day, and 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
 - (ii) 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.
- 15 Given the mandatory nature of ground 12, the Tribunal determined to deal with it first, as it would be obliged to grant the order if the above provisions were met. In such circumstances ground 11 would be superfluous.
- 16 The Tribunal had heard submissions from Vincent Spangenberg, the agent for the Applicant. The Tribunal found him to be credible in his narration of the history of the Respondent's tenancy. The Tribunal accepted that no rent had been paid since the tenancy commenced in April 2019. It noted that there had been mention of housing benefit issues, however no evidence had been forthcoming from the Respondent in this regard. The Tribunal found it difficult to accept that the Respondent had yet to resolve her housing benefit application, some nine months into the tenancy. She appeared to place blame on Aberdeen City Council for this, however the Tribunal had to conclude that

the Respondent was ultimately responsible for progressing her housing benefit claim and for payment of the rent. She had failed to put anything before the Tribunal that would suggest ongoing efforts to resolve matters. Further, she had failed to provide any assurance that a payment of backdated benefit was forthcoming. Accordingly the Tribunal could not make a finding that the arrears were due to a failure to pay a relevant benefit. The Tribunal had regard to the fact that the Respondent had paid nothing towards the rent account since her tenancy had commenced. The Tribunal therefore considered it would be prejudicial to the Applicant were the tenancy to continue in the absence of any assurances of rent.

- 17 The Tribunal was not therefore satisfied that a hearing was required in the matter and considered that it could deal with the application at the Case Management Discussion. Based on the evidence from the Applicant, and the outstanding rent arrears, which were not disputed by the Respondent, the Tribunal concluded that ground 12 had been met. Accordingly the Tribunal was obliged to grant an order for repossession.
- 18 The Tribunal therefore made an order for repossession against the Respondent.

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.

Ruth O'Hare

Legal Member/Chair

13/11/20

Date