



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

Chamber Ref: FTS/HPC/EV/19/3676

Re: Property at Flat 1/2 132 Neilston Road, Paisley, PA2 6QH (“the Property”)

Parties:

Mr Inderbir Singh, 66 Fulbar Crescent, Paisley, PA2 9AS (“the Applicant”)

Mr Mark Young, Flat 1/2 132 Neilston Road, Paisley, PA2 6QH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 against the Respondent.

Background

1. By application dated 11 November 2019 the Applicant seeks an eviction order in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include copy tenancy agreement dated 1 July 2018, rent statement showing a balance due of £6120, copy Notice to Leave dated 30 April 2019 and copy Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 (“the Section 11 Notice”) together with copy email to the local authority. The application states that the eviction order is sought on grounds 11 and 12 of Schedule 3 of the 2016 Act.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 6 January 2020. Both parties were notified that the application would call before a Legal Member of the Tribunal for a case management discussion (“CMD”) on 3 February 2020 at 10am in

Glasgow Tribunal Centre, 20 York Street, Glasgow.

3. On 20 January 2020 the Applicant's representative submitted an updated rent statement showing a balance due of £6480.00. On 24 January 2020 a copy of this was sent to the Respondent.

Case Management Discussion

4. The application called for a CMD on 3 February 2020. A related application ("the payment application") under Chamber Reference HPC/CV/19/3677 also called. The Applicant was represented by Ms Cochrane, solicitor who was accompanied by Ms Campbell, trainee solicitor. The Applicant did not attend. The Respondent did not attend and did not send any written representations to the Tribunal in advance of the CMD.
5. Ms Cochrane advised the Legal Member that she has had no contact from the Respondent. She confirmed that the Applicant understands that the Respondent is still in occupation of the property. No payment toward the rent account has been made since July 2018 and the balance due in terms of the rent statement submitted on 20 January 2020 is £6480. She advised the Tribunal that the Respondent has been in rent arrears for three or more consecutive months, both at the date the Notice to Leave was issued and the date of the CMD. The sum due is in excessive of one month's rent. She confirmed that an eviction order is sought in terms of ground 12 of the 2016 Act. Following discussion she confirmed that she was not insisting on the other ground stated in the application, ground 11, as the breach of tenancy being relied upon is also failure to pay rent. She accepted that ground 11 appears to exclude the obligation to pay rent and therefore did not apply to this case.
6. Ms Cochrane advised the Legal Member that the Applicant has complied with the requirements of the 2016 Act. A notice to leave was hand delivered by the Applicant on 30 April 2019. The Applicant has confirmed to her that it was handed personally to the Respondent, and this was witnessed by a Samuel Murphy who has signed a doquet to this effect on the copy Notice submitted to the Tribunal. She confirmed that the requisite period of Notice of 28 days has been given as the Notice indicates that the earliest date upon which an application can be made to the Tribunal is 12 June 2019. The application was submitted after this date but within 6 months of the Notice being served, as required by the 2016 Act.

Findings in Fact

7. The Applicant is the owner of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy with the Applicant. The tenancy started on 1 July 2018.

9. In terms of the tenancy agreement the Respondent is due to pay rent at the rate of £360 per month.
10. The Respondent is in arrears of rent in the sum of £6480.
11. The Respondent remains in occupation of the property.

Reasons for Decision

12. The Legal Member considered the application, the documents lodged with same and the submission made by the Applicant's representative at the CMD.
13. The Legal Member notes that the tenancy started on 1 July 2018 and is therefore a private residential tenancy in terms of the 2016 Act. In terms of the tenancy agreement the Respondent is due to pay rent at the rate of £360 per month. The Legal Member is satisfied from the rent statement lodged and the submission made on behalf of the Applicant, that the Respondent has failed to pay rent since July 2018 and currently owes the sum of £6480 in unpaid rent. Ground 12 of Schedule 3 of the 2016 Act states "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months". Section 51 of the 2016 Act states "(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". The Legal Member is satisfied that ground 12 has been established and, if the Applicant has complied with the requirements of the 2016 Act, that an eviction order must be granted.
14. The Legal member proceeded to consider whether the Applicant has complied with Sections 52 and 54 of the 2016 Act. The Legal Member notes that the Applicant has lodged a copy Notice to Leave in the prescribed format, as required by Section 52(3) of the 2016 Act. Furthermore, the Notice to leave submitted provides the Respondent with the requisite 28 days notice as required by Section 54(2) of the 2016 Act. The Legal Member notes that the notice was not sent or emailed to the Respondent. The Notice states on the front page that it is to be hand delivered. It is witnessed at the end with the date of delivery stipulated. The Legal Member was advised that it was handed personally to the Respondent, not simply posted through the letter box. The Legal Member is satisfied that the Respondent was served with a valid Notice to Leave in advance of the application being submitted to the Tribunal. The Legal Member is also satisfied that the Section 11 Notice and covering email meet the requirements of Section 56 of the 2016 Act.
15. The Legal Member is satisfied that the Applicant has complied with the requirements of the 2016 Act and is entitled to an eviction order in terms of Section 51 of the said Act.

Decision

16. The Legal Member determines that an eviction order should be granted 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.

Josephine Bonnar
Josephine Bonnar, Legal Member

3 February 2020