

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

Chamber Ref: FTS/HPC/EV/19/0707

Re: Property at 9/16 Wardlaw Place, Edinburgh, EH11 1UA (“the Property”)

Parties:

Ms Caroline Grant, 49 Ramsay Avenue, Laurieston, Falkirk (“the Applicant”)

Ms Ewa Maksymowicz, 9/16 Wardlaw Place, Edinburgh, EH11 1UA (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 4th March 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with her application copies of the private residential tenancy agreement, notice to leave with execution of service, section 11 notice and rent arrears statement.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 27th April 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 28th May 2019 at George House, 126 George Street, Edinburgh. The Applicant appeared, and was not represented. The Respondent did not appear, nor was she represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal should note that its administration did receive an e-mail the afternoon before this Case Management Discussion, on a bank holiday when the office was closed, from someone called Anna Maksymowicz in the following terms:

"Please consider my request for a postponement of the upcoming tribunal date for Ewa Maksymowicz. We have been unable to get representation and would appreciate more time to get assistance with this."

The writer of the e-mail does not identify the case reference for any application, nor the date of the Tribunal she is referring to. In any event, the writer has never been identified by the Respondent as authorised to act as her representative, the request comes too late, and does not identify the issue upon which legal advice might be sought nor any legal defence to this application.

The Tribunal responded by e-mail to the writer an hour before this Case Management Discussion advising that it could not discuss any application with someone who was not authorised to act on behalf of a party, and that this Case Management Discussion would proceed. No response has been received to the Tribunal's e-mail.

In these circumstances, where the request comes from someone who is not a party to this application nor a representative, the Tribunal is not prepared to entertain it.

I was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 17th January 2019 narrated that rent arrears at that time amounted to £1,482.00, accumulated over in excess of three months under the private residential tenancy agreement between the parties.

The Applicant confirmed that since 17th January 2019 no further rental payments have been made, and that as of today's date rent arrears have been accumulating over a period of fifteen months with no payments made at all in respect of the last six monthly rental payments.

The Applicant had provided the Tribunal with an updated rent arrears statement on 21st May 2019 disclosing this information. Rental of £600.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) 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 than the amount which would be payable as one month's rent under the tenancy on that day, and (2) 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 (3) 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 Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period substantially in excess of 3 months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

N Kinnear

Legal Member/Chair

28/05/19

Date