



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/19/0219

Re: Property at 0/2, 43 Eversley Street, Glasgow, G32 8HS (“the Property”)

Parties:

Mrs Lianna McCormack, 8 Speyburn Place, Stepps, G33 6JD (“the Applicant”)

Mr John McCann, 0/2, 43 Eversley Street, Glasgow, G32 8HS (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice
 - a copy of the Respondents payment history
3. The Applicants’ representative Ms Blackwood from Fineholm Lettings, appeared on behalf of the Applicant. There was no appearance by the Respondent.

4. Notice of the Hearing had been served on the Respondent by sheriff officers on 27 March 2019. As I was satisfied that the Respondent had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in his absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. She also confirmed that the notice to leave had been served by email.
6. She advised that although the notice to leave sought eviction under two grounds, anti-social behaviour and rent arrears for a period of more than 3 months, the Applicant was no longer insisting on eviction for anti-social behaviour.
7. She advised that the current level of arrears were £1,683.64. She advised that when the application was made to the Tribunal the arrears were £950 and that there had been arrears on the rent account for a period exceeding three consecutive months. She advised that since the application had been lodged there had been three rent payments to the account. These payments had been from benefits and totalled £641.76, the breakdown of that total being a payment on 7 March 2019 of £355.86; then a payment of £57.18; and finally a payment of £228.72 had been received with advice that this sum would be paid four weekly thereafter. She did not consider that the arrears were due in part or wholly due to a delay in benefits, and she submitted that it appeared that the payments which had been received from benefits would tend to show the benefits are being paid.
8. The Applicant's representative advised that they had no contact whatsoever with the Respondent, they had been various attempts to speak to him about the arrears however he had not been forthcoming about this issue. The last attempt made to contact the Respondent had been a home visit on 2 April 2019 however he had not been present on that date.
9. The Applicants' representative advised that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and she did not consider that there were outstanding benefits issues causing the arrears.
10. She advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

11. The Tribunal found the following facts established:-

12. There existed a private residential tenancy between the Applicants and the Respondent. It had commenced on 6 July 2018. The tenancy agreement had been signed by both parties on 6 July 2018.
13. The tenancy was for the property Flat 0/2, 43 Eversley Street, Tollcross, Glasgow, G32 8HS.
14. The tenant is John McCann.
15. The landlord is Lianna McCormack.
16. Clause 8 of the Tenancy Agreement provides that the rent for the property is £450 per calendar month. It is payable in advance and due on the first of each month.
17. The notice to leave was addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 20 December 2018. It confirmed that proceedings would not be brought until 21 January 2019. It had been sent to the Respondent by email on 20 December 2018. The grounds in the notice to leave included ground 12 "you are in rent arrears over three consecutive months".
18. That rent arrears had been outstanding since August 2018.
19. There were rent arrears outstanding at the date of the application, namely 22 January 2019, which totalled at least one month's rental due under the tenancy.
20. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
21. That the Respondent appeared to be in receipt of relevant benefit for his rent.
22. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

23. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
24. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
25. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."

26. Sub paragraph 2 provides that the Tribunal must find that the grounds named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
27. I found that the terms of sub-paragraph 2 were met and accordingly, I consider that I must find that the ground in sub paragraph 1 applies; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

28. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

Legal Member/Chair

15. 4. 19

Date