



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/19/1704

Re: Property at Flat 34, Seven Oaks House, Harrysmuir Road, Pumpherston, EH53 0NT (“the Property”)

Parties:

Planview Properties Ltd, Marketing Suite, Curling Pond Lane, Longridge, EH47 8FD (“the Applicant”)

Mr Mark Pasquill, Flat 34, Seven Oaks House, Harrysmuir Road, Pumpherston, EH53 0NT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession of the Property under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 be granted. **The order will be issued to the Applicants after expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 30 May 2019 the Applicant’s solicitors, Messrs Liddle and Anderson applied to the Tribunal for an order for repossession of the Property under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy from 25 September 2018, a Notice to Leave dated 25 March 2019 requiring possession of the Property from 29 April 2019, a rent statement, various text messages dated between 5-15 May 2019, various email messages dated between 7 – 25 March 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council dated 30 May 2019.
3. On 1 July 2019 the Tribunal accepted the application.
4. On 12 July 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 28 July 2019. The Tribunal advised both parties that a Case Management Discussion under Rule 17 of the First –tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) would proceed on 20 August 2019. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 12 July 2019 and the certificate of service was received by the Tribunal administration.
5. The Respondent did not make any representations by 28 July 2019.

Case Management Discussion

6. The Tribunal proceeded to a Case Management Discussion on 20 August 2019. Ms Rashid, from Messrs T C Young appeared as a local agent for Messrs Liddle and Anderson on behalf the Applicant. There was no appearance by or on behalf of the Respondent.
7. The Tribunal had before it a Private Residential Tenancy from 25 September 2019, a Notice to Leave dated 25 March 2019 requiring possession of the Property from 29 April 2019, a rent statement, various text messages dated between 5-15 May 2019, various email messages dated between 7 – 25 March 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council dated 30 May 2019. The Tribunal also had a copy of the Land Certificate under Title MID6064 which showed the Applicant was the heritable proprietor of the Property.
8. Ms Rashid asked the Tribunal to grant an order for repossession of the Property under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
9. The Tribunal noted that the Applicant and the Respondent had entered into a Private Residential Tenancy commencing on 25 September 2018 in relation to the Property. In terms of Clause 7 of this agreement the Respondent had agreed to pay monthly rent of £500 to the Applicant. Ms Rashid submitted that there was no separate payment action but that the arrears currently stood at £2750. There had been no payment of rent since 15 March 2019. There

had been arrears for over three consecutive months with the arrears figure being over a month of rental charge. She advised that the Applicant had attended at the Property which was found to be empty. She submitted that the Respondent may have left but was seeking to protect the Applicant's position.

10. The Tribunal referred to the Notice to Leave dated 25 March 2019 and sought confirmation from Ms Rashid that this had been served on the Respondent at the email address given by the Respondent under Clause 3 of the tenancy agreement. Ms Rashid confirmed it had been. With further reference to the Notice to Leave the Tribunal referred to Part 3 which set out that the total arrears were £1250 when it was served, but that amount was not reflected in the rent statement before the Tribunal. Ms Rashid advised she also had noted that discrepancy. However she submitted that in any event there were three consecutive months of arrears amounting to over a month's rent with the last payment being on 15 March 2019 and therefore she was entitled to repossession in terms of Ground 12 of Schedule 3 of the 2016 Act.
11. The Tribunal noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on West Lothian Council on 30 May 2019.

Findings in Fact

12. The Applicant is the heritable proprietor of the Property.
13. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement with a start date of 28 September 2018 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £500. The Respondent is the tenant of the Property.
14. The Respondent has fallen into arrears of rent.
15. The Respondent last paid rent on 15 March 2019. In terms of the rent statement produced he was in arrears of £250 on 15 March 2019. The Respondent has made no payments of rent since that date.
16. On 25 March 2019 by way of email the Applicant served a Notice to Leave on the Respondent at the email address provided by the Respondent under Clause 3 of the tenancy agreement.
17. Arrears have increased to £2750 as of 20 August 2019. The Respondent has been in arrears for over three consecutive months. The amount of arrears exceeds the monthly rent of £500.
18. The Property appeared to be empty.

19. A Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 was served on West Lothian Council on 30 May 2019.

Reasons for Decision

20. The Tribunal considered the documents before it and the oral submissions made by Ms Rashid. The Tribunal was satisfied the Respondent was in arrears of rent for over three consecutive months and in excess of a month's rent due. The Tribunal accepted the Property appeared to be empty. In the circumstances it appeared to the Tribunal that the arrears were not wholly or partially a consequence of a delay or failure of a relevant benefit. The Tribunal was satisfied all appropriate paperwork had been established. The Tribunal was satisfied that Ground 12 of Schedule 3 of the 2016 Act had been satisfied and that the Applicant was therefore entitled to repossession of the Property.

Decision

21. The Tribunal granted an order for repossession of the Property.

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.

Shirley Evans

Legal Member/Chair

Date

20 August 2019