



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/18/1869

Re: Property at 31 Langford Drive, Parkhouse, Glasgow, G53 7HU (“the Property”)

Parties:

Mr Nazir Ahmad, 53 Carlibar Road, Barrhead, Glasgow, G78 1AD (“the Applicant”)

Mr David Anthony Fletcher, 31 Langford Drive, Parkhouse, Glasgow, G53 7HU (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and that an Eviction Order should be issued.

Background

By application, received by the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) on 27 July 2018, the applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Private Housing (Tenancies) Scotland Act 2016 (“the 2016 Act”). The application was accompanied by a Notice to Leave, dated 21 June 2018, with a handwritten note incorporating the Respondent’s acknowledgement of receipt, on 22 June 2018, of the Notice to Leave and a copy of the Tenancy Agreement, which had commenced on 1 April 2018.

The Notice to Leave stated that the Eviction Grounds being used were the fact that the Landlord intended to live in the Property, a family member intended to live in the Property, the Respondent had breached a term or terms of the Tenancy Agreement and that the Respondent was in rent arrears for three or more consecutive months.

In the application, however, the Applicant stated that he was seeking the Eviction Order under Grounds 4,5,11 and 12. The Tribunal noted that these were grounds for possession set out in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act"), which apply to tenancies granted after 2 January 1989 but before 1 December 2017.

At a Case Management Discussion held on 20 September 2018, the Tribunal accepted the validity of the Notice to Leave and, using the discretion afforded to it by Section 52(4) excused the error in the application, on the ground that the 1988 Act Grounds referred to were mirrored in Schedule 3 of the 2016 Act.

The Tribunal was not, however, satisfied that the Applicant had met the obligations contained in Sections 56(1) and 56(2) of the 2016 Act, which provide that a landlord may not make an application to the Tribunal for an Eviction Order unless the landlord has given notice to the local authority, in the manner and form prescribed under Section 11(3) of the Homelessness (Scotland) Act 2003, of the landlord's intention to do so. The Tribunal, therefore, continued the application for determination at a hearing and instructed the Applicant to lodge evidence that he had complied with the obligation to make intimation to the local authority of his intention to apply to the Tribunal and also to provide an up to date rental statement.

The Applicant subsequently provided to the Tribunal a rent statement, received on 11 October 2018, showing arrears of rent amounting to £6,000, with no payment received since April 2018. He also forwarded to the Tribunal an e-mail from Glasgow City Council dated 12 September 2018, confirming that the Council had received notification under Section 11 of the Homelessness (Scotland) Act 2003

The Hearing

A Hearing was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 30 October 2018. The Applicant attended the hearing, but the Respondent was neither present nor represented.

The Applicant confirmed to the Tribunal that no payments of rent had been received since his submission of the rent statement received by the Tribunal on 11 October 2018. He also advised the Tribunal that his daughter and grand-daughter intended to occupy the Property as their only or principal home for at least 3 months (Eviction Ground 5). They were presently homeless. In addition, the Respondent had failed comply with the obligation under the tenancy to pay rent lawfully due (Eviction Ground 12).

Findings in Fact

The Respondent has been in rent arrears for more than three consecutive months.

Reasons for Decision

The Tribunal was satisfied that the requirements of Eviction Ground 12 of Schedule 3 of the 2016 Act have been met. Accordingly, the Tribunal must find that Eviction Ground 12 applies and that the application for an Eviction Order on that Ground should be granted.

The Tribunal did not consider Eviction Ground 4, as the Applicant had stated at the Case Management Discussion that he was no longer relying on that Ground. The Tribunal did not uphold the application under Eviction Ground 11, as it specifically excludes the term under which a tenant is required to pay rent. Having determined that the application should be granted and an Eviction Order issued under Eviction Ground 12, the Tribunal did not find it necessary to consider further the application under Eviction Ground 5.

Decision

The Tribunal determined that the requirements of Eviction Ground 12 have been satisfied and that the Tribunal must issue an Eviction Order.

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.

G Clark

Legal Member/Chair

30 October 2018

Date