



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/18/3492

Re: Property at 12 The Grange, Perceton, Irvine, KA11 2EU (“the Property”)

Parties:

Mr Inderjit Singh, 16 The Grange, Perceton, Irvine, KA11 2EU (“the Applicant”)

Mr Roy Dalley, Mrs Jackie Dalley, 12 The Grange, Perceton, Irvine, KA11 2EU (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member) and David MacIver (Ordinary Member)

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for eviction in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application contained:-
 - a) a copy of the Tenancy Agreement;
 - b) copy of notice to leave (unsigned and undated)
 - c) copy of bank statements
 - d) copy of section 11 notice to local authority
 - e) a copy of the rental schedule to 10 October 2018
 - f) a copy of the rental schedule to 29 January 2019
 - g) a copy of the rental schedule to 4 April 2019 (submitted to the tribunal on 4 April 2019)
 - h) email from the Applicant’s letting agent to the Respondent sent 15 November 2018 entitled “Notice to Leave” (submitted to the tribunal on 4 April 2019)

- i) email from the Respondent to the Applicant's letting agent sent 4 December 2018 (10:12) entitled "Letter" (submitted to the tribunal on 4 April 2019)
 - j) email from the Applicant's letting agent to the Respondent sent 4 December 2018 (10:23) entitled "Letter" (submitted to the tribunal on 4 April 2019)
 - k) Affidavit by Carol Dickie (applicant's letting agent) in relation to FTS/HPC/EV/18/3501 dated 11 April 2019 (lodged at hearing on 12 April 2019)
 - l) Affidavit by Carol Dickie (applicant's letting agent) in relation to FTS/HPC/CV/18/3492 dated 11 April 2019 (lodged at hearing on 12 April 2019)
 - m) Copy of a notice to leave signed and dated 15 November 2018
3. This application had been continued from a previous case management discussion which had taken place on 4 March 2019 and a part heard hearing on 12 April 2019 reference is made to the full terms of the Notes prepared in relation to that discussion and hearing. The previous hearing had been adjourned in order that the Respondents had time to consider the terms of the affidavits which had been lodged, and to have the letting agent attend and give evidence in person regarding service of the notice to leave.
4. The Applicant was in attendance and was represented by Ms Susan Bell, from Messrs Bell & Co. The Respondent, Mrs Dalley was in attendance and represented herself, Mr Dalley was not present.
5. The Tribunal raised the Respondent's email to the tribunal office sent on 5 June 2019 advising that she and her husband had secured a new tenancy and they were moving out on 14 June 2019. The Applicant confirmed that notwithstanding this, they were still seeking to have the order granted today. They had their witness in attendance to give evidence and were ready to proceed. The Respondent confirmed that while she would prefer not to have the order granted, she no longer opposed the application.

The Hearing

6. The Applicant's agent had lodged affidavits in support of the application that the letting agent had hand delivered the notice to leave on 16 November 2018. There had also been lodged the tenancy agreement, and a rent account statement.
7. The notice to leave sought eviction under ground 12, rent arrears for a period of more than 3 months.
8. The outstanding rent arrears at the date of the last hearing were £5350. A payment order in favour of the Applicant against the Respondents for that sum had been granted by the Tribunal on 12 April 2019. There were further rent arrears outstanding since that date. There had been arrears on the rent account for a period exceeding three consecutive months.

9. Both Respondents worked. There did not appear to be any outstanding benefits issues causing the arrears.
10. The Applicant's agent advised 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. A tenancy agreement was entered into between the Applicant and the Respondents for the property and existed between the parties.
13. It commenced on 30 April 2018.
14. The clause 7 in the tenancy agreement provided that rent was £950 per calendar month payable in advance and that rent was due on the last day of month.
15. The rental statement showed some payments made towards rent by the Respondents during 2018 and 2019 but not £950 per month as required under the terms of the tenancy agreement.
16. The Respondents had agreed that rent arrears due to end of March 2019 totalled £5350.
17. A payment order in favour of the Applicant against the Respondents for payment of rent arrears had been granted by the Tribunal on 12 April 2019 for rent arrears due to the end of March 2019.
18. There was a notice to leave addressed to the Respondents. It contained information for the Respondents as to why an eviction order was sought. It was dated 15 November 2018. It confirmed that proceedings would not be brought until 17 December 2018. It appeared to have been hand delivered to the Respondents on 16 November 2018.
19. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
20. Rent arrears had been outstanding since 1 August 2018.
21. That there were rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
22. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.

23. 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

24. 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.
25. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
26. Sub paragraph 1 states that “It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.”
27. 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.
28. Rent arrears have been outstanding for more than three consecutive months, the rent arrears total more than one’s months rent, and it did not appear that the arrears had been caused by a delay or failure in the payment of relevant benefits. We consider that the terms of sub-paragraph 2 are met and accordingly, we find that the ground in sub paragraph 1 applies; and therefore we consider that we are required to grant an eviction order in terms of ground 12 rent arrears.

Decision

29. The Tribunal grants an order in favour of the Applicant against the Respondents 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.

Ms Melanie Barbour

Legal Member/Chair

7.6.19

Date