

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/19/4015

Re: Property at 56 Newpark Road, Stirling, FK7 0QF (“the Property”)

Parties:

Mr Douglas Cruickshank, Mrs Therese Cruickshank, 8 Westlands Court, Bridge Road, East Molesely, Surrey, FT8 9HQ (“the Applicant”)

Mrs Julie McDonald, 56 Newpark Road, Stirling, FK7 0QF (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an order for possession of the Property against the Respondent in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Background

The Applicant was the owner of the Property. They had let the Property to the Respondent initially under a short assured tenancy and from 1 March 2018 a new private residential tenancy had been agreed and granted. The initial rental had been £650 per calendar month but this had been reduced to £550 when the March 2018 lease had been granted. The Applicant alleged that there were arrears of rental that had built up over a prolonged period of time under both leases and, as a result, they sought the termination of the tenancy on the basis of rent arrears.

The Tribunal had before it the following documentation:-

- The Applicant’s application to the Tribunal dated 19 December 2019;
- Copy of the private residential tenancy between the parties;

- Copy Notice to Leave (and Royal Mail proof of service) dated 12 November 2019;
- Copy s11 Homelessness Notice to the relevant local authority;
- Rental Arrears statement showing £6,178.89 outstanding as at November 2019;
- A copy of the Applicant's Land Certificate evidencing title to the Property;
- Copy correspondence provided by the Respondent and the local authority regarding the payment of various benefits.

Case Management Discussion ("CMD")

The Tribunal held a CMD at Wallace House, Maxwell Place, Stirling, FK8 1JU at 10am on 3 March 2020. The Applicant was not present but was represented by their letting agent, Carol Barrett of Cross Developments Limited. The Respondent was present and accompanied by her partner.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had granted a private residential tenancy ("PRT") to the Respondent on 1 March 2018;
- At the point of grant of the PRT there were arrears of £3,748.99. By the date of the Applicant's application to the Tribunal there were arrears of £6,178.89;
- The Respondent was more than 3 full months in arrears under the PRT and the terms of Ground 12 of Schedule 3 of the Act had been met;
- The Respondent confirmed the outstanding arrears were due;
- There was no current dispute between the Respondent and the local authority regarding payment of any benefit due to her

Reasons for the Decision

The Tribunal noted that there had, in effect, been two leases granted to the Respondent by the Applicant. There had been arrears of rent under both. There may be some debate about whether the arrears under the old short assured tenancy that had been in place prior to the PRT were relevant in assessing whether the Applicant was entitled to a mandatory eviction. However, the Tribunal did not feel there was any merit in assessing this point. Since the grant of the PRT in March 2018, arrears of £2430.09 had occurred. The monthly rental was £550. The Respondent had missed three months rental around February to March 2019 and combined with older arrears under the PRT meant that the terms of Ground 12 of Schedule 3 of the Act had been met. Accordingly the Tribunal was obliged to grant an order for possession in favour of the Respondent.

The Respondent had highlighted that she had had issues with the local authority regarding payment of benefits. She produced documentation from May 2019 in this regard. The Tribunal noted that whilst it did appear that the Respondent had received various amounts in benefits, the issue appeared to have been resolved in

May 2019 (and in fact there had been an overpayment to her of £292). The Tribunal was aware of the terms of Ground 12 subsection 4, which obliges the Tribunal to consider whether the arrears had arisen as a result of delay or failure of payment of a benefit. Whilst it did appear that there had been some historical issues with the local authority these had been determined in May 2019 and all relevant sums had been paid. Accordingly subsection 4 did not provide any grounds for not granting the eviction order. The Respondent herself did not question the arrears schedule produced by the Applicant.

The Tribunal was, however, reluctant to grant the order. Since May 2019, the rental had been paid in full by way of benefits and the arrears were not increasing. The Applicant was not seeking, in addition to the order for possession, an order for payment and so recovery of the historical arrears did not appear to be of significant importance to the Applicant. The Respondent's partner was clearly unwell and it was apparent that eviction would cause some distress to the Respondent and her family. Whilst there were undoubtedly arrears of rental, and the Respondent accepted that she had struggled to make up each month the shortfall between her benefits and the rental, nonetheless she was now in receipt of the full amount of rental each month by way of benefits and this was being paid to the Applicant and had been for the best part of the year. However, notwithstanding the Tribunal's reluctance to grant the order the Tribunal was obliged to do so. The paperwork requiring the Respondent to remove had been properly prepared and served by the Applicant. The terms of Ground 12 of Schedule 3 to the Act had been met. This was a mandatory ground and there were no current issues relating delay in paying benefits that had caused the arrears. Accordingly the Tribunal was obliged to grant the 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.

E Miller

Legal Member/Chair

3/3/2020

Date