



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/19/2221

Re: Property at 34 Pine Court, Cumbernauld, G67 3AY (“the Property”)

Parties:

Ms Julia Fielden, 2a Westmount Park, Newtonards, Co Down, BT23 4BP (“the Applicant”)

Ms Alison Thompson, Ms Ellie Thompson, 34 Pine Court, Cumbernauld, G67 3AY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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

1. Background
2. 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 Respondents for the Property.
3. 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 with evidence of service
 - a copy of the Respondents’ rental statement
4. On 3 October 2019 Ms Allison, from Anderson Strathern Solicitors appeared on behalf of the Applicant. There was no appearance by the Respondents. As

I was satisfied that the Respondents had been served with notice of that hearing; and that the terms of ground 12 of schedule 3 of the Act (that the tenant has been in rent arrears for three or month consecutive months) had been met; I was obliged to grant an order for eviction. Reference is made to the terms of that written decision.

5. Following the issue of the written decision, it came to the Tribunal's attention, that the first Respondent had submitted written representations prior to the case management discussion; however, these written representations had not been passed to myself, as the legal member at, or before, the case management discussion. These written representations had not therefore been taken into account by me when coming to my decision. Rule 39 of the Schedule to the 2017 Regulations states that the Tribunal may at its own instance review a decision made by it where it is necessary in the interests of justice to do so. I was satisfied that, as I had not been in a position, in arriving at my decision, to take into account the written representations from the Respondents, the interests of justice required me to review the decision I had made at the Case Management Discussion. After considering the terms of the written representations I recalled the Order for Eviction made and continued consideration of the case to today's Case Management Discussion. Reference is made to the terms of that written review decision.
6. At today's Case Management Discussion, Mr Ritchie, from Messrs Anderson Strathern appeared on behalf of the Applicant. Ms Alison Thompson, the first Respondent also appeared. She advised that the second Respondent, Ms Ellie Thompson no longer lived at the property and she would not be attending today.
7. Hearing
8. The Applicant's representative provided an up-to-date rent account. He advised that the current level of arrears were £1945.25. He advised that the only payments which had been made to the rent account had been the universal credit payments, and there had been no other additional payments received towards the top up payment for the balance of rent or the arrears.
9. He advised that he was moving for the order for possession to be granted today given that the level of the rent arrears.
10. Ms Thompson advised that she had received a letter about her application for discretionary housing benefit. She had not brought the letter with her today. She advised that the terms of the letter were that she has been awarded £15.17 per week which would be backdated to the date when she applied for it, the beginning of October 2019. She advised that there would be a total payment of discretionary housing benefit of £167 (for the period from around the beginning of October 2019 until mid-January 2020). She advised that she would have to re-apply for it in the third week of January 2020.
11. I referred Ms Thompson to her email of 2 October 2019 when she stated that, *"as of this month I will have an extra £127 per month on my universal credit ...*

I can could offer to pay 200 on the 27th of every month towards the arrears that have built up.” She made reference to this offer again in her further email of 25 October 2019. I asked her if she had made any payments towards the top up rent or the arrears. She advised that she had not done so; however she indicated that money was still being deducted from her universal credit, but that these deductions would be coming to an end this month. She could start taking the payments on the 27 December 2019. Further, she could pay £100 just now. She advised that she had spoken to the letting agents and they were happy to enter into an arrangement with her; however she was waiting for them to contact her about making repayments.

12. Mr Ritchie advised that his instructions were to seek an order for eviction. He advised that Ms Thompson had made numerous promises to pay the arrears and top up rent; however none of them had ever come to anything. He noted her offer of 2 October 2019 and advised that no payments in respect of that offer had been made.
13. Mr Ritchie submitted that there had been three consecutive months of rent arrears on the account, that these arrears totalled more than one month's rent, that the discretionary housing payment would not reduce the arrears to less than one month's rent and therefore in the circumstances the tribunal did not have discretion in this matter and had to grant the order sought.

14. Findings in Fact

15. The Tribunal found the following facts established:-
16. There existed a private residential tenancy between the Applicant and the Respondents. It had commenced on 28 February 2019.
17. Clause 8 of the Tenancy Agreement provides that the rent for the property is £550 per calendar month. It is payable in advance and due on the 5th of each month.
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 31 May 2019. It confirmed that proceedings would not be brought until 29 June 2019. It had been served on the Respondent by sheriff officers on 31 May 2019. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
19. That rent arrears had been outstanding since the tenancy begun.
20. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
21. The arrears were not caused by any delay or failure in the payment of a relevant benefit.

22. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

23. 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 month 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. 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; I have found the other statutory requirements to have been complied with; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

29. Decision

30. 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.

Melanie Barbour

Legal Member/Chair

4.12.19

Date

