



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/19/1576

Re: Property at 13 Bruce Street, Bathgate, EH48 2TJ (“the Property”)

Parties:

Mrs Zoe Tuach Davidson, 8 Oxbow Way, Manchester, M45 8SG (“the Applicant”)

Ms Joanna Cecylia Jakimow, 13 Bruce Street, Bathgate, EH48 2TJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application dated 23 May 2019 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property on the grounds that the Applicant and her husband intended to sell the property and that the Respondent had accrued rent arrears over 3 months.
2. The Tribunal was provided with a copy of the tenancy agreement, a rent statement, Notice to Leave and execution of Service and Section 11 Notice in support of the application. The Tribunal was also provided with confirmation that the Applicant’s husband and co-owner of the property was in agreement with the raising of the proceedings.

3. By Notice of Acceptance dated 30 July 2019 a legal member of the Tribunal accepted the application and a case management discussion was assigned.
4. Intimation of the case management discussion was given to the Applicant by post and to the Respondent by Sheriff Officers on 9 August 2019.
5. No written submissions were received from the /Respondent.

The Case Management Discussion

6. The case management discussion was held at George House Edinburgh on 13 September 2019. The applicant attended personally along with her husband. The Respondent did not attend however after the commencement of the case management discussion the Tribunal was informed that the respondent had attended at the Glasgow Tribunals Centre in error. The tribunal having been satisfied that proper intimation of the case management discussion had been given to the Respondent and that the letter served on her clearly showed that the venue was “**George House Room D10, 126 George Street, Edinburgh, EH2 4HH**” the Tribunal determined to proceed with the case management discussion in her absence.
7. The Applicant confirmed that the tenancy agreement had been prepared by her agents Purple Bricks. It was a Private Residential Tenancy that commenced on 9 April 2018 at a rent of £855.00 per calendar month. The Applicant explained that the Respondent had fallen into arrears of rent in about January 2019 and referred the Tribunal to the rent statement dated 21 May 2019 which showed that the Respondent had accrued rent arrears amounting to £3830.00 as at that time. The applicant went on to say that the Respondent had not paid any rent since that date and the current arrears stood at £7250.00.
8. The Applicant confirmed that her agents Purple Bricks had served Notice to Leave on the Respondent by recorded delivery post on 6 February 2019 providing that the applicant was intending to sell the property and also that the Respondent was in rent arrears.
9. The Applicant explained that as the tenancy agreement had provided for all communication to be by email her agents had first attempted to send a Notice to Leave to the Respondent by email but that had bounced back and could not be delivered. The agents had then tried to contact the Respondent by telephone to obtain a new email address for her but had been unable to do so and had therefore had to resort to sending the Notice to Leave by recorded delivery post. The delivery receipt was with the papers submitted.
10. The Applicant confirmed that she and her husband had not yet done anything about selling the property as they wished to wait until the Respondent had moved out of the property so that they could ascertain its condition and take any steps to make it ready for selling. They had not instructed a solicitor or

estate agent. They had obtained a quote for obtaining a home report but that was all. The applicant said that they had wanted to put pressure on the Respondent to pay the rent by threatening to sell the property as they had a mortgage to pay on it. It was their intention to sell once they had vacant possession.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 9 April 2018 at a monthly rent of £855.00.
12. The Respondent fell into rent arrears in about January 2019 and has paid no rent since that date.
13. The current rent arrears amount to £7250.00
14. The Applicant's agents Purple Bricks served a Notice to Leave on the Respondent by recorded delivery post that was delivered on 7 February 2019.
15. The Applicants agents sent a Section 11 Notice to Edinburgh City Council at the commencement of raising proceedings.

Reasons for Decision

16. The Tribunal was satisfied from the documents submitted to it that the parties had entered into a private residential tenancy agreement that commenced on 9 April 2018. The Tribunal was also satisfied that the Respondent had fallen into rent arrears by January 2019 and it was apparent from the rent statement submitted by the Applicant and the further information provided by her at the case management discussion that no further rent had been paid and that the current arrears amounted to £7250.00.
17. The Respondent had not submitted any written submissions and there was no indication that her failure to pay rent was as a result of a delay or failure in the payment of a relevant benefit.
18. The Tribunal had been concerned that the Notice to Leave had been sent by recorded delivery post when it had been agreed in the tenancy agreement that all communications would be by email but the Tribunal was satisfied that as the original Notice to Leave could not be delivered by email and it had not been possible to obtain a current email address for the Respondent it was reasonable in the circumstances for the Notice to Leave to be sent by recorded delivery post.
19. The Tribunal was not satisfied that the Applicant was able to provide sufficient evidence to support her contention that it was her intention to sell the property. The tribunal would have expected more than just a quote from a firm of surveyors for providing a home report. The tribunal would have expected

confirmation from a firm of solicitors or estate agents that they had been instructed to market the property once vacant possession had been obtained. The Tribunal therefore refused to grant an order under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

20. The Tribunal was however satisfied that the Respondent was in arrears of rent by an amount greater than the equivalent of one month's rent and had been so for three or more consecutive months and that therefore the terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 had been met. As this was a mandatory ground for granting an order for eviction the Tribunal had to grant the order sought in terms of that ground.

Decision

21. The tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property in terms of 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.

Graham Harding

Legal Member/Chair

13 September 2019

Date