



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/19/2562

Re: Property at 40 Lilybank Crescent, Forfar, Angus, DD8 2HZ (“the Property”)

Parties:

Mr Barry Martin, Bonfield Farmhouse, Strathkinness, Fife, KY16 9RR (“the Applicant”)

Wardhaugh Property, 38-40 East High Street, Forfar, DD8 2EG (“the Applicant’s Agent”)

Mr Jack Conway, 40 Lilybank Crescent, Forfar, Angus, DD8 2HZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

1 By application dated 13th August 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Notice to Leave dated 10th July 2019 stating that proceedings for possession will commence no earlier than 9th August 2019 and citing ground 12 together with proof of delivery by email;
- (ii) Private Residential Tenancy Agreement between the parties dated 15th February 2019;

(iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council; and

(iv) Emails from the Applicants Agent to the Respondent dated 3rd May, 5th June, 11th June, 14th June and 26th June 2019 regarding non-payment of rent.

2 By Notice of Acceptance of Application dated 3rd September 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 17th October 2019.

3 On 12th September 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

Case Management Discussion

5 The Case Management Discussion took place at Caledonian House, Dundee on 17th October 2019. Fiona Wakem and Tracey Roberts appeared on behalf of the Applicant's Agent, representing the Applicant. They advised that the arrears had increased to £1923.56 and produced a rent statement to support this fact. There had been no payments by the Respondent since 7th May 2019. They had been to the property and he appeared to still be residing there but was not responding to any contact. There is no evidence of any housing benefit. The Applicant was seeking the order for eviction.

Findings in Fact

7 The parties entered into a Tenancy Agreement dated 15th February 2019 in respect of the Property;

8 The rent due under the terms of the Tenancy Agreement was £425 per month;

9 A Notice to Leave under section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 was delivered to the Respondent by email on 10th July 2019. The Notice states ground 12 as the ground upon which the landlord seeks repossession.

10 The last payment of rent made by the Respondent was a payment of £425 on 7th May 2019.

9 The arrears as at the date of the Case Management Discussion amount to £1923.56;

10 The rent account has been in arrears for three or more consecutive months;

- 11 The rent arrears are not a result of any delay or failure in the payment of housing benefit.
-

Reasons for Decision

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers. He had not taken the opportunity to make written representations, nor had he attended the Case Management Discussion.
- 13 The Tribunal noted that the Applicant sought recovery of possession under ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon the Respondent under section 62 of that Act confirming the Applicant was seeking repossession on that ground.
- 14 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. The Tribunal must grant the order for repossession where:-
- (i) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater one month's rent under the tenancy on that day, and has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and
 - (ii) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 15 In the absence of any evidence to the contrary, the Tribunal accepted the submissions Ms Wakem and Ms Roberts made on behalf of the Applicant at the Case Management Discussion. The Tribunal found their position to be credible and had no reason to question the evidence she had put forward.
- 16 The Tribunal was therefore satisfied based on its findings in fact that arrears of rent in the sum of £1923.56 were outstanding as at the date of the Case Management Discussion and that the rent payable under the terms of the tenancy was £425 per month. The Tribunal further accepted that the Respondent had paid nothing to the rent account since May 2019, and therefore the rent account had been in arrears for more than three consecutive months. There was nothing before the Tribunal to evidence that the arrears were due to any delay or failure in payment of a relevant benefit.

17 The Tribunal therefore found ground 12 to be met and determined to make an order for repossession of the property.

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.

Ruth O'Hare
Legal Member/Chair

Date

17/10/19