



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/19/3457

Re: Property at Flat 1/2, 98 Neilston Road, Paisley, PA2 6EN (“the Property”)

Parties:

Mrs Moira Lang, 34 Riccarton Avenue, Paisley, PA2 6BG (“the Applicant”)

Mr Szymon Wankowicz, Flat 1/2, 98 Neilston Road, Paisley, PA2 6EN (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.

Background

1. An application was received on 28 October 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 10 and 11 as set out in Schedule 3 of the 2016 Act.
2. The application included: the tenancy agreement between the parties; a notice under section 11 of the Homelessness etc. Scotland Act 2003; and a rent statement showing the rent arrears due at the time of application to be £870. It also included a copy of the Notice to Leave as required under section 50(1) (a) of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the 2016 Act’) dated 14 June 2019, citing grounds 11 and 12. It also included a statement dated 14 June 2019 and signed by the respondent, the applicant and her representative, her husband, Mr David Lang, confirming that the respondent had been served

with the Notice to Leave, and with a copy of his rent statement, in person by Mr Lang on 14 June 2019.

3. Notice of the case management discussion (CMD) scheduled for 19 February 2020, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 16 January 2020.
4. The tribunal issued a direction to the applicant on 3 February 2020, noting that the application form stated that the application was brought on grounds 10 and 11, which were incorrectly stated on the form to be respectively that the tenant has stayed in the property despite being given a Notice to Leave, and that there had been a persistent delay in paying rent. The Notice to Leave dated 14 June 2019, however, stated that the eviction grounds being used were grounds 11 (breach of tenancy agreement) and 12 (rent arrears over three consecutive months.) The tribunal directed the applicant to confirm whether she wished to amend her application to proceed on those grounds by 12 February 2020. The applicant and her representative confirmed in a letter sent by email on 7 February 2020 that she wished to amend the application to grounds 11 and 12.
5. No written representations were received from the respondent prior to the CMD.

The Case Management Discussion

6. A CMD was held on 19 February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and was represented by her husband, Mr David Lang. The respondent was not present and was not represented.
7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent.

Preliminary issue

8. The tribunal chairperson noted that Part 4 of the Notice to Leave dated 14 June 2019 stated that the date before which an application would not be submitted to the tribunal for an eviction order was 12 July 2019. The tribunal was satisfied that the Notice to Leave had been served personally on the respondent by Mr Lang on 14 June 2019. As the eviction grounds stated in the notice to leave were grounds 11 and 12, the relevant period in terms of section 54(2) (b) of the 2016 Act was 28 days.
9. The tribunal noted that the Notice to Leave had been served 28 days before the date stated in Part 4 i.e. 12 July 2019. The chairperson pointed out that in terms

of section 62(4) of the 2016 Act, the date to be specified on which the landlord under the tenancy expects to become entitled to make an application order to the tribunal is the day falling *after* the day on which the notice period defined in section 54(2) will expire. Therefore the Notice to Leave should have specified a date 29 days after it was received, not 28 days after this.

10. Mr Lang told the tribunal that the date given in the notice to leave was stated in good faith, and that he had understood from the guidance for landlords that only 28 days' notice was required.
11. The tribunal noted that the application had in fact not been received until 28 October 2019, some months after the date stated in the Notice to Leave. It also noted that the guidance for landlords was not clear on the question of the notice required. The tribunal then considered whether section 73 of the 2016 Act might be applied here. Section 73(1) provides that an error in the completion of a document to which that section applies (which includes a Notice to Leave in terms of section 73(2)) does not make the document invalid unless the error materially affects the effect of the document.
12. In all the circumstances, the tribunal concluded that the error in the Notice to Leave i.e. that the stated date was one day earlier than it should have been did not materially affect the effect of the document. The tribunal therefore determined that the Notice to Quit was not invalid, and proceeded to consider the application.

Evidence on behalf of the applicant

13. Mr Lang asked the tribunal to grant an order in favour of the applicant against the respondent for recovery of possession of the property. He indicated that he was happy to proceed solely on the basis of ground 12. He told the tribunal that the respondent had been in arrears continuously since October 2018, and had paid no rent since August 2019. He currently owed a total of £2030 in rent arrears, as shown on an updated statement which Mr Lang had sent to the tribunal on 7 February 2020.

Findings in Fact

14. The tribunal made the following findings in fact:
 - The applicant is the owner of the property. She is the landlord in terms of the private residential tenancy agreement between the parties which commenced on 18 September 2018.
 - The monthly rent payable in terms of the tenancy agreement was £290 per month, payable on the 1st of each month.

- As the eviction grounds stated in the Notice to Leave were grounds 11 and 12, the relevant period in terms of section 54(2) (b) of the 2016 Act was 28 days. The notice to leave was dated 14 June 2019, and delivered personally to the respondent on the same day. It stated that an application for an eviction order would not be submitted to the tribunal before 12 July 2019.
- The respondent owed rent arrears of £2030 as at the date of the CMD, and had been in rent arrears continuously since November 2018.

Reasons for Decision

15. The tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act, for the reasons discussed at paragraphs 8-12 of this decision.
16. The tribunal agreed to amend the application to proceed on grounds 11 and 12, as requested by the applicant's representative in his email of 7 February 2020. This had been received more than 7 working days before the date of the CMD, in terms of rule 13 of the 2017 rules. The amendment did not raise new issues, as it reflected the grounds contained in the Notice to Leave.
17. Ground 12 as set out in Schedule 3 of the 2016 Act states:
- 12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) The First-tier Tribunal must find that the ground named by 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 payable as one month's rent under the tenancy on that day, and
 - (ii) 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
- (b) 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.
18. The tribunal was satisfied on the evidence before it that the requirements for ground 12 were established. It was clear from the rent statements before the tribunal that the respondent was at the date of the CMD in arrears of more than one month's rent, and that he had been in arrears of rent for a continuous period of three or more consecutive months.

19. The tribunal then considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, in terms of ground 12 (2) (b). Mr Lang told the tribunal that the respondent was not on benefits to his knowledge. He said that he was not aware of any delay or failure in the payment of a relevant benefit. There was no evidence before the tribunal to the contrary.

20. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

21. The tribunal is therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.

Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession 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.

S.O

Legal Member/Chair

19/2/20

Date