



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 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/20/1300

Re: Property at Flat 0/2, 9 South Annadale Street, Glasgow, G42 7LB (“the Property”)

Parties:

Manorlink Limited, C/O Securigroup, Venlaw 4th Floor, 349 Bath Street, Glasgow, G2 4AA (“the Applicant”)

Mr Adam Ziga, Flat 0/2, 9 South Annadale Street, Glasgow, G42 7LB (“the Respondent”)

Tribunal Members:

Nicola Weir (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 of the property be granted.

Background

1. By application received on 15 June 2020, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave served on the Respondent, proof of service by Sheriff Officer of the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £2,340 and copies of correspondence to the Respondent in respect of the rent arrears.

2. On 5 August 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 19 August 2020, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion to take place by telephone conference call on 14 September 2020 at 10am. Written representations were to be lodged by 7 September 2020. No written representations were submitted by the Respondent.

Case Management Discussion

4. On 14 September 2020, at 10am, the Applicant's representative, Ms Elle Paiget, Office Manager had joined the telephone conference Case Management Discussion, together with Mr David Davie, Branch Manager, both of Core Citi Limited. It was noted that Ms Paiget had emailed the Tribunal previously to advise of Mr Davie's attendance. The Legal Member delayed the start of the Case Management Discussion for a few minutes to see if the Respondent joined but he did not.
5. After introductions and introductory remarks by the Legal Member, Ms Paiget was asked to address the application. She confirmed that the eviction order sought is in respect of rent arrears which now amount to £5,540, having been accruing for more than 13 months. Although the Legal Member advised of the terms of the report received from the Sheriff Officer to the effect that, when they served the paperwork on the Respondent on 19 August 2020, there was a significant amount of mail behind the door of the Property and that this may be an indication that the Property was no longer occupied, Ms Paiget advised that they have no reason to think that the Respondent is not still in occupation. She mentioned that the Respondent had previously made a payment arrangement with the Applicant but did not adhere to this and that the last payment he had made towards his rent was on 28 August 2019. They tried everything to resolve the issue with the Respondent but to no avail. In response to questions from the Legal Member, Ms Paiget confirmed that the rent in terms of the tenancy was £400 per calendar month and that when the Notice to Leave was served arrears totalled £2,340 and were more than 3 consecutive months in arrears. She confirmed that, as far as they were aware, the Respondent had been working when he took on the tenancy. He had not given any explanation for the arrears such as a change in circumstances or that he had made a claim for state benefits. His payments had become erratic a few months before he stopped making payment altogether and she confirmed that he has not made any payments since August 2019. She advised that he had telephoned and made an arrangement to pay a lump sum of £1,400 towards the arrears but he was not then in when their agent called at the Property as arranged. A subsequent visit to the Property was made, when the Respondent did answer the door but he just said that he did not have the money and offered no further explanation. Ms Paiget said that they have had no further contact from the Respondent since. As regards the Notice to Leave, Ms Paiget confirmed that

they had been asked previously by the Tribunal to comment on the notice period of 28 days required and the date stated in the Notice to Leave for the end of the notice period/earliest date by which an eviction order would be applied for. Ms Paiget confirmed that they had submitted written representations on this matter which had been accepted and allowed the case to proceed to today's Case Management Discussion. Ms Paiget explained that the Notice to Leave was dated 28 February 2020 and that it was personally served on the Respondent by Sheriff Officer that day. She stated that they did not therefore have to allow the two additional days for deemed receipt by the Respondent as the Notice to Leave had not been sent by post or email. In accordance with a previous Decision from the Tribunal in an earlier eviction case in which they had acted for a different Applicant (which Decision she had submitted with her written representations) and having regard to Scottish Government guidance, the date of service of the Notice to Leave was counted as the first day of the 28 day Notice period and working forward from that and then adding a further day, gave the relevant date of 27 March 2020 stated in the notice. The Legal Member noted that the date of the Application to the Tribunal was 29 April 2020 and, due to the effects of the Coronavirus pandemic, the date of receipt of the Application by the Tribunal was 1 June 2020. Ms Paiget confirmed that they were hoping to obtain an eviction order today.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 9 March 2018.
3. The rent in terms of the lease is £400 per calendar month.
4. The Respondent initially made his due rental payments but the payments then became erratic and fell into arrears.
5. Rental payments due to be paid in the five months September 2019 to January 2020 inclusive were missed in their entirety.
6. A Notice to Leave dated 28 February 2020, specifying Ground 12 of Schedule 3 to the 2016 Act, was served on the Respondent by Sheriff Officer on 28 February 2020, in accordance with the terms of the lease, at which point the rental arrears owing were £2,340.
7. The date specified in the Notices to Leave as the end of the notice period was 27 March 2020.
8. The Tribunal Application was dated 29 April 2020 and was received by the Tribunal on 15 June 2020.

9. No payments have been received from the Respondent in respect of rent since 28 August 2019 and the arrears now owing amount to £5,540, representing more than 13 months' rent.
10. The Respondent has been called upon to make payment of the rental arrears but has failed to do so.
11. The Applicant has not been contacted by the Respondent since prior to this Application being made to the Tribunal and no explanation has been given for the non-payment of rent.
12. The Respondent is believed by the Applicant to still occupy the Property.

Reasons for Decision

13. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. There was accordingly no issue taken and no contradictory evidence put forward in respect of the application by the Respondent.
14. The Legal Member was satisfied that the Notice to Leave was in correct form, served by appropriate means, gave the requisite period of notice of 28 days and that these Tribunal proceedings were thereafter brought timeously, after the date specified in the Notices to Leave, all in accordance with the terms of the Lease and the relevant provisions of the 2016 Act.
15. The Legal Member was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the Case Management Discussion that all aspects of the 'mandatory' arm of Ground 12 of Schedule 3 to the 2016 Act, namely 12(2) had been met, as follows:-

Rent arrears

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.

16. The amendments to the 2016 Act made by The Coronavirus (Scotland) Act 2020 as regards notice periods and mandatory eviction grounds becoming discretionary have no bearing in this case as the Notice to Leave was served prior to 7 April 2020, the date of commencement of the 2020 Act.

17. The Legal Member therefore concluded that the application does not require to go to an evidential hearing and that an order could be made at the Case Management Discussion for recovery of possession of the Property.

Decision

The Legal Member accordingly determines that an order for possession of the Property should be granted.

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.

Nicola Weir

Legal Member/Chair

14 September 2020
Date