

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/3018

Re: Property at 109 Westray Street, Milton, Glasgow, G22 7AX (“the Property”)

Parties:

Mrs Carolyn Kemley, trading as CK Properties, 115 Westray Street, Milton, Glasgow, G22 7AX (“the Applicant”)

Miss Michelle Traynor, 109 Westray Street, Milton, Glasgow, G22 7AX (“the Respondent”)

Tribunal Member:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a hearing and issued an eviction order against the Respondent.

Background

By application, received by the Tribunal on 8 November 2018, the Applicant sought an eviction order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Part 3 of Schedule 3 to the 2016 Act.

The application was accompanied by copies of a Notice to Leave dated 4 September 2018, informing the Respondent that the Applicant intended to apply to the Tribunal for an eviction order and advising that the application would not be submitted to the Tribunal for an eviction order before 5 September 2019, and a rental statement showing arrears as at 29 September 2018 of £882.61. The application was also accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 16 April 2018 at a rent of £550 per four week period.

On 11 February 2019, the Tribunal advised the Parties of the date, time and venue for a case management discussion and the Respondent was invited to make written representations by 27 February 2019. The Respondent requested and was granted a

postponement of the case management discussion, which was then rescheduled to 27 March 2019. On 25 March 2019, the Respondent again requested a postponement, as she was due to be in court on 27 March, but, having failed to produce confirmation from her solicitor that she was a party to or had been cited as a witness in court proceedings on that date, her request for a postponement was refused.

Case Management Discussion

The Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow, on the morning of 27 March 2019. The Applicant, Mrs Carolyn Kemley was present, along with her husband, Mr Ian Kemley. The Respondent was not present or represented at the Case Management Discussion.

The Applicant asked the Tribunal to issue an eviction order without a hearing.

The Applicant advised the Tribunal that there had been a Short Assured Tenancy Agreement between the Parties which had commenced in 2013, but it had been terminated by mutual agreement on 16 April 2018. The Applicant produced to the Tribunal the termination agreement, signed by both Parties on 16 April 2018, the date of commencement of the Private Residential Tenancy Agreement.

The Applicant advised the Tribunal that the first rental payment, due on 16 April 2018, had not been paid and that there had been shortfalls in payments due in July, August and September 2018 totalling £332.61. The shortfalls in payments had represented the difference between the contractual rent and the Respondent's Housing Benefit payments, but nothing at all had been paid since 3 September 2018. The arrears currently stood at £4,039.37.

Reasons for Decision

Rule 17 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would decide the application without a hearing.

Ground 12 of Part 3 of Schedule 3 to the 2016 Act states that is in an eviction ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal **must** find that Ground 12 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 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 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.

The Tribunal was satisfied that the requirements of Ground 12 of Part 3 of Schedule 3 to the 2016 Act had been met. The rent had been continuously in arrears since 16 April 2018 and the arrears stood at £4,039.37. The rent per four week period was £550. The Respondent had not provided any evidence to suggest that the arrears were in any way a consequence of a delay or failure in the payment of a relevant benefit and the evidence given by the Applicant at the Case Management Discussion

supported that conclusion. Accordingly, the Tribunal was bound to issue the eviction order.

Decision

The Tribunal determined that the application should be decided without a hearing and issued an eviction order against the Respondent.

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.

G Clark

Legal Member/Chair

27 March 2019

Date