



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/19/1511

Re: Property at 25B Kerrsview Terrace, Dundee, DD4 9BJ (“the Property”)

Parties:

Mr Paul Grossi, 18 Fairmuir Road, Dundee, DD3 8JE (“the Applicant”)

Mrs Nicola Loftus, 25B Kerrsview Terrace, Dundee, DD4 9BJ (“the Respondent”)

**Tribunal Member:
George Clark (Legal Member)**

Decision

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

Background

By application, received by the Tribunal on 16 May 2019, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 23 October 2018 at a rent of £545 per month, a Notice to Leave dated 14 May 2019, stating that the rent arrears as at 14 May 2019 were £2,101.10 and would be £2,487.17 at 14 June 2019. The Applicant stated in the application that the Respondent had been in arrears since the second month of the tenancy.

On 10 July 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 30 July 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Caledonian House, Greenmarket, Dundee, on the morning of 20 August 2019. The Applicant was represented by

Annette Robinson and Trevor White of Rent Locally Tayside & Fife. The Respondent was represented by Peter Kinghorn of Dundee North Law Centre.

The Applicant's representative referred the Tribunal to the Applicant's e-mail of 29 July 2019 to which was attached an updated Rent Statement showing arrears now standing at £2,509.90 and asked the Tribunal to issue an Eviction Order without a hearing. The Respondent's representative asked the Tribunal to consider whether the application was valid in terms of Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") as Section 5 did not set out the Ground for Eviction or contain a brief description of the circumstances that led to the application being made. He did not dispute the amount of the arrears or that the requirements of Ground 12 of Schedule 3 to the Act had been met.

The Applicant's representative referred the Tribunal to the Notice to Leave, which had accompanied the application and which clearly set out the details and evidence of the Eviction Ground.

The Respondent's representative advised the Tribunal that his client was awaiting provision of accommodation by Dundee City Council as a homeless person and asked if the Tribunal might supersede execution of the Eviction Order by a period of one or two weeks, to allow the Respondent more time to secure alternative accommodation. This was opposed by the Applicant's representative on the ground that there was a Guarantor for payment of rent in this case and it would be unfair to extend the period of the lease as it would be prejudicial to the Guarantor.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") 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 determine the application without a hearing.

The Tribunal noted the argument made by the Respondent's representative regarding the application form, but was satisfied that, whilst it would have been preferable for Ground 12 to be referred to in Section 5 of the application, as the application had been accompanied by a copy of the Notice to Leave, which set out clearly that the Ground being relied on was Ground 12 and detailed the rent arrears, the requirement of Rule 109 of the had been met.

The Tribunal was not prepared to supersede execution of the Order it proposed to make, as there was no evidence to indicate that the requested delay of two weeks would be sufficient to enable to Respondent to secure alternative accommodation.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant in a Private Residential Tenancy if, on application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 12 of Schedule 3 to the 2016 Act states that it is 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, 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 one month's rent 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 the Tribunal is satisfied that the

tenant's being in arrears 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 from the evidence provided by the Applicant that the arrears presently exceeded one month's rent and that the rent had been continuously in arrears since November 2018. There was no evidence to suggest that the arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 had been met and the Tribunal was bound to make an Eviction Order.

Decision

The Tribunal determined that the application should be determined 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

20 August 2019

Date