



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2866

Re: Property at 30I Polepark Road, Dundee, DD1 5QS (“the Property”)

Parties:

Stuart Ball, c/o SGL Property Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)

Mr Josh Maddin, 30I Polepark Road, Dundee, DD1 5QS (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an order for eviction should be granted.

Background:

The application was made to the First –tier Tribunal (FTT) on 9 September 2019. The application asked for eviction of the Respondent on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Attached to the application were:

1. the Private Rented Tenancy Agreement for the property commencing 1 March 2019
2. Copy Notice to Leave dated 2 July 2019 with the date on which proceedings could first be raised stated as 2 August 2019 and execution of service by Sheriff Officers dated 4 July 2019
3. Copy S 11 Notice and delivery confirmation,
4. Rental Statement

A Case Management Discussion (CMD) was scheduled for 23 December 2019 and both parties advised of the date, time and venue.

P. H

The Tribunal received confirmation that service of the CMD and case details on the Respondent had been carried out by Sheriff Officers successfully on 22 November 2019. The Tribunal thus considers that the appropriate notice period has been given to the Respondent. The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Case Management Discussion

Mr Jay Lawson from Muir Myles Lavery solicitors attended on behalf of the Applicant. The Respondent did not attend.

The application stated that as of 9 September 2019 the arrears amounted to £2,765 and that the Landlord and Tenant entered into a Tenancy Agreement on the 20th July 2018. It referred to the Tenant having been issued with a Tenancy agreement on 1 March 2019.

However the rental statement submitted showed the arrears as of September 2019 at an amount of £2,370. Mr Lawson clarified that the entry in the column for "Total due" had been used as the arrears figure, not the entry in the column "balance outstanding". He confirmed that the arrears on 9 September 2019 as per the rental statement submitted with the application were £2,370. He further stated that the arrears now stood at £3,555 as no further payments had been received. He had checked the position with Mr Ball on the day of the CMD.

He further clarified that the reference to a tenancy starting on 20th July 2018 was made in error and that the tenancy had started on 1 March 2019 as stated in the tenancy agreement.

He confirmed that in terms of the Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 the tenant was in arrears of £3,555, which is an amount greater than the £395 monthly rent and that the Respondent had been in arrears of rent for over 3 consecutive months as no payments have been received since the initial payment in February 2019 for the first month of the tenancy.

The documents lodged in evidence are referred to for their terms and held to be incorporated herein.

The decision is made on the basis of the written representations and the documents lodged in evidence, which are referred to for their terms and held to be incorporated herein and the update received by Mr Lawson on behalf of the Applicant at the CMD. On the basis of the evidence the Tribunal makes the following:

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 1 March 2019**

2. Rent of £395 per month is payable in advance on the 1st of the month.
3. No rental payments were received after the initial payment of £395 in cash made on 19 February 2019.
4. The Respondent has not made any payments towards the arrears.
5. For the period 1 April 2019 to 9 September 2019 the shortfall is £2,370
6. Notice to Leave was served on the Respondent by Sheriff Officers on 4 July 2019
7. It states as the relevant date in part 4 the 2 August 2019.
8. It advised the Respondent of the ground for the Notice to Leave being ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 in that at the time Notice to Leave was given there were arrears of rent of 3 consecutive months.
9. As at the 23 December 2019 the arrears of rent are £3,555.
10. No payments have been received since the application was made.
11. The Respondent has been in arrears of rent for the period of 9 consecutive months from April to December 2019

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

S 51 of the Act states:

Eviction order

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Ground 12 in Schedule 3 of the Act states

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.

The Notice to Leave complies with the statutory requirements and gave the required 28 day notice period. There was no valid defence to the action. It is not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent had accumulated rent arrears evidenced in the documentation for 9 months. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application. The Tribunal on the basis of the tenancy agreement and payment schedule in the application as well as the updated information from the Applicant's representative accepted that the arrears on the day the Tribunal considers the application on its merits are more than one month's rent. No rent payments have been received apart from the initial payment of rent on 19 February 2019. The arrears currently stand at £ 3,555, which is a sum in excess of the monthly rent due of £395.

No payments of any further sums to clear the arrears have been evidenced and the Tribunal accepts that these are still outstanding. The Respondent has not provided any information that would indicate any payments towards the arrears or that the arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act

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.

P. H

Legal Member/Chair

27.12.19

Date