



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 Act”)

Chamber Ref: FTS/HPC/EV/21/2619

Re: Property at 38 Sandyknowes Road, Cumbernauld, G67 2PG (“the Property”)

Parties:

Marble Properties Ltd, 272 Bath Street, Glasgow, G2 4JR (“the Applicants”)

Miss Donna Taylor, 38 Sandyknowes Road, Cumbernauld, G67 2PG (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that the order for possession be GRANTED under s51 of the Act.

1. BACKGROUND

This is an application to bring to an end a Private Residential Tenancy (“PRT”) between the parties commencing 25 March 2019 in view of rent arrears which the Applicants state have accrued in the sum of £5200-21, up to 25 November 2021, per Rent Statement lodged for period from 1 April 2020 to said date. Said Statement also indicated the Respondent had been in arrears for a period in excess of 3 consecutive months in that the Respondent was in arrears throughout the whole of the period covered by said Statement.

Following upon sundry procedure, a Case Management Discussion (“CMD”) was fixed for 14 March 2022.

Prior to the CMD, preliminary consideration of the supporting documentation for this application confirmed that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003 on 29 November 2021.

From that preliminary consideration also, the Tribunal noted that Notice to Leave dated 4 December 2020 was given to the Respondent by e-mail on the same date, sent to her e-mail address as specified in the Clause 1 (“TENANT”) clause of the PRT, based on the Respondent being in rent arrears for 3 or more

consecutive months (Ground 12 of Schedule 3 of the Act) and that this application, based on said ground, was also lodged on or about 29 November 2021. Accordingly, the Respondent had been afforded the requisite 6 months notice period required for a Ground 12 application, leading to acceptance of the application by the Tribunal by letter of 29 December 2021.

For the sake of completeness, the Tribunal also noted documentation indicating that this application had been commenced on 22 October 2021, but was superceded by the subsequent application made on 29 November 2021, above referred to, which appears to have been made by way of response to a letter from the Tribunal requesting further information. In any event, the same Tribunal reference number pertained throughout.

Accordingly, the Applicants founded on the level of arrears which had accrued, maintained Ground 12 was therefore established and, accordingly, it was reasonable for the Tribunal to grant the eviction order sought, given said arrears.

At all times the Tribunal was aware that in relation to this eviction case, it required to be satisfied not only that the formal requirements regarding same had been complied with but also that it was reasonable to make the order for repossession.

2. CASE MANAGEMENT DISCUSSION

A CMD took place by teleconference on 14 March 2022, when the Applicants appeared in the person of Mr Alan Wong.

The Respondent was neither present nor represented.

Confirmation was available to the Tribunal of sheriff officer intimation of said CMD on the Respondent by letter box delivery on 2 February 2022.

Accordingly, notwithstanding the Respondent's absence, the Tribunal considered the CMD could proceed. Clearly, however, since the Respondent was not present nor represented, no facts relating to her ability to ensure payment of the rent or background in which the rent fell into arrears were capable of agreement.

Mr Wong confirmed and advised that letters had been sent to the Respondent on at least 23 and 26 November 2021 providing her with advice and information about outstanding matters and possible routes to resolution, which letters were produced at the CMD and which the Tribunal regarded, after consideration, sufficiently satisfied and fulfilled pre-action requirements. He confirmed that there had been no acknowledgement of these letters by the Respondent and that there had been no further contact since then. The Tribunal also had sight of e-mails to the Respondent in similar vein dated 27 May and 15 October 2021. In response to enquiry from the Tribunal. Mr Wong further advised that the last communication he had had with the Respondent had predated said letters of 23 and 26 November, in which she had made promises of moving to cheaper accommodation in order to use the rent saved to pay off arrears for the Property. She also advised that she had been unsuccessful in obtaining any financial assistance by way of benefits or suchlike, due to the fact that she was not actually homeless.

She had failed to respond to further enquiries in December 2021 and January 2022 for updates and meantime the only payments the Applicants had received towards rent had been by way of Universal Credit, but as at the CMD date, the arrears stood at some £6878-26, since arrears had continued to

accrue.

The Applicants regarded the Respondent's failure to pay even a single pound (£) towards her rent to show a complete lack of good faith, to put it mildly Mr Wong further confirmed that so far as he was aware, the Respondent shared the property with her teenage son and adult daughter and that he had tried to advise and assist the Respondent in making further application for financial assistance by way of receiving benefits for them, again to no avail.

He advised he had only raised proceedings with some reluctance and remained willing to assist the Respondent if he could, but nonetheless sought the order since he simply could not afford to have the Respondent living at the Property rent free, with no sign of any effort being made by her to address the rent issue in any meaningful way.

His frustration at the approach taken by the Respondent was almost tangible. In the circumstances of such a substantial amount of arrears having now accrued and there being no reasonable proposals to address same, he asked the Tribunal to find the rent arrears part of Ground 12 established and on that account to consider it reasonable to make the order for eviction now sought. Obviously, in view of the Respondent's failure to attend, there was no challenge to any of what was stated on behalf of the Applicants nor verification of the personal circumstances of the Respondent.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 14 March 2022 in the sum of £6878-26 arising out of a Private Residential Tenancy between the parties commencing 25 March 2019. Said arrears include non-payment of rent for a period in excess of 3 consecutive months during at least the period between 1 April 2020 and 14 March 2022.

4. REASONS FOR DECISION

The Tribunal was satisfied, as advised by Mr Wong that arrears of £5200-21 had accrued per the Rent Statement to 25 November 2021, that these now stood at £6878-26 and that accordingly the Respondent had been in rent arrears for 3 or more consecutive months. Having found that the Respondent was due and liable for arrears of rent as above stated, the Tribunal was of the view that the rent arrears part of Ground 12 founded upon by the Applicants in this application had been established.

Furthermore, in view of said level of arrears which had accrued, the Tribunal was satisfied it was just and reasonable to make the order sought.

5. DECISION

To make the order for possession sought by the Applicants.

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.



SR QUITHER

14 MARCH 2022

Legal Member/Chair

Date