



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/22/1345

Property : 18 Leyshade Court, Dundee DD4 8XN (“Property”)

Parties:

Lesley Hesketh, 72 Waverley Crescent, Livingston EH54 8JP (“Applicant”)

M.A.S.K Property Management, Office 112, Stadium House Business Centre, Livingston EH54 7DN("Applicant's Representative")

Mark Forster, 18 Leyshade Court, Dundee DD4 8XN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement dated 18 December 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 7 April 2022 ("Notice to Leave") which included a statement of account; a statement of account for the period when the Applicant managed collection of rent on their own behalf; copy email from the Applicant's Representative to the Respondent dated 7 April 2022 attaching Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 11 May 2022 and sheriff officer's execution of service certifying service of the Application on 24 August 2022.

Case Management Discussion

A case management discussion took place before the Tribunal on 10 October 2022 by teleconference. William Dodd of the Applicant's Representative was in attendance. There was no appearance by the Respondent.

The Tribunal noted that the email address for the Respondent in the tenancy agreement differed to the email address to which the notice to leave had been sent. Mr Dodd provided the Tribunal with screenshots of messages exchanged between the Applicant and the Respondent in which the Respondent provided to the Applicant an updated email address which was the same as the address to which the Notice to Leave was sent.

Mr Dodd told the Tribunal that he had managed the Property since February 2022. He said he had contacted the Respondent on numerous occasions about the arrears. He said that the Respondent was entitled to the housing element of universal credit but he had not claimed it. Mr Dodd said that when he asked the Respondent to pursue that, the Respondent would say he had an appointment "next week" but applying for the housing element was not progressed. He said that no rent at all had been paid since February 2022. He said that the Applicant had no option other than to recover possession of the Property. Mr Dodd said that the arrears at the date of service of the notice to leave were £2,580 but were now £5580. The Tribunal noted a reference to the Respondent having a support worker. Mr Dodd said he did not know what condition the Respondent may have. He said he had not been contacted by a support worker.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced on 18 January 2021 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 7 April 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 8 May 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 11 May 2022.
5. Notice of the date of the case management discussion had been given to the Respondent on 24 August 2022.

6. The Respondent had failed to pay the rent in full for the period 1 July 2021 to 17 March 2022.
7. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statements of rent arrears and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.

J Devine

Legal Member

Date: 10 October 2022

