



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/19/2896

Re: Property at 17B Rosslyn Road, Ashgill, ML9 3AT (“the Property”)

Parties:

Mrs Claire Robb, 38 Station Road, Carluke, ML8 5AD (“the Applicant”)

Ms Kirsty Russell, 17B Rosslyn Road, Ashgill, ML9 3AT (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant and David Robb for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant and David Robb to the Respondent commencing on 5 April 2018.
2. The application was dated 12 September 2019 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave dated 17 July 2019 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email on that date in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. The body of the notice referred to arrears of £880 and set

out how they were constituted. The rent due under the PRT is £275 per month due in advance on the 5th of each month. The Notice intimated that an application to the Tribunal would not be made before 19 August 2019.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon South Lanarkshire Council on 12 July 2019 was provided with the application.

The Hearing

5. On 20 November 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre I was addressed by the Applicant's agent, Jacqueline Duggan of Let Link Ltd.
6. There was no appearance for the Respondent. The Applicant's agent confirmed that no contact had been received from the Respondent since September 2019 when she had stated she had been intending to move out of the Property. I considered the evidence of intimation of the application and CMD by the Tribunal's Sheriff Officer and, on waiting a few additional minutes for any appearance, was satisfied to consider the application in the Respondent's absence.
7. The Applicant's agent confirmed that the application for eviction was still insisted upon. She said that when the Property was last visited in September 2019 the Respondent's belongings remained there and she had received no contact since to suggest that the Respondent had vacated. The Applicant's agent confirmed that no rent had been received in some months and the sum due as of 5 November 2019 was £1,980. The Applicant's agent had received no indication that the Respondent was in receipt of benefits or was seeking them. No order for expenses was sought.
8. There were a number of preliminary matters regarding the application. The Tribunal's own investigations had confirmed that the Property was owned by the Applicant but the lease and the application was in the joint names of David Robb and Claire Robb. The Applicant's agent was satisfied to accept that only the Applicant was the owner and the application was duly amended to drop reference to Mr Robb. Further, the lease permitted service of notices, such as a Notice to Leave, on the Respondent by email but the email address stated was different to that used by the Applicant's agent to serve the Notice to Leave. The Applicant's agent confirmed that the email address in the lease was connected to an iPhone and she was aware that the Respondent had ceased to use such a phone, so used an alternative email account held by her. She directed me to the application papers which contained email exchanges with the Respondent using that alternative email address before and after the Notice to Leave. I was satisfied with this explanation.

Findings in Fact

9. On 28 March and 4 April 2018, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 5 April 2018 (“the Tenancy”).
10. In terms of clause 3 of the PRT, the parties agreed that email would be required for communication of notices in terms of the Tenancy.
11. On 17 July 2019, the Applicant’s agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £880.
12. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 19 August 2019.
13. By email on 17 July 2019, the Applicant’s agent sent a copy of the Notice to Leave to the Respondent.
14. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
15. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon South Lanarkshire Council on the Applicant’s behalf.
16. As of 20 November 2019, the Respondent remained in arrears of rent in the amount of £1,980.
17. The Respondent does not claim to have paid any amount of the arrears remaining as at 20 November 2019.
18. The sum of arrears remaining as of 20 November 2019 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
19. On 22 October 2019, a Sheriff Officer acting on the instruction of the Tribunal intimated upon the Respondent the date and time of the CMD.

Reasons for Decision

20. The application was in terms of rule 109, being an order for eviction of a PRT. I was satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
21. Ground 12 is a mandatory ground provided that:

“(1) ...the tenant has been in rent arrears for three or more consecutive months.

“(2) ...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 arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. The Respondent has provided no response or denial to the Applicant or Tribunal on these arrears. No issue relating to benefits or the existence of a benefit application is known of.

22. In all the circumstances before me, I was satisfied that Ground 12 was well founded by the Applicants.
23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, I am thus satisfied to grant an order for eviction at this time.

Decision

24. In all the circumstances, I grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that 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.

J. C

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Date

20 November 2019