



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/20/1124

Re: Property at 27 Todhill Avenue, Kilmarnock, East Ayrshire, KA3 2EQ (“the Property”)

Parties:

Mr Malcolm Boyes and Mrs Linda Boyes, 18 Talbot Road, Maidstone, Kent, ME16 0HB (“the Applicants”)

Murphy Scoular, 22/24 John Finnie Street, Kilmarnock, KA1 1DD (“the Applicants’ Representative”)

Mr James Burns, 27 Todhill Avenue, Kilmarnock, East Ayrshire, KA3 2EQ (“the Respondent”)

Tribunal Members:

Ms. Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 12 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit or universal credit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

- 1.1. On 24 April 2020, the Applicant's Representative made an application to the tribunal in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicants seek the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 1988 Act.
- 1.3. The Applicants' Representative lodged with the Application:
 - 1.3.1. Copy Private Residential Tenancy agreement dated 13 April 2018;
 - 1.3.2. A copy rent statement for the period 13 April 2018 to 14 January 2020;
 - 1.3.3. A Notice to Leave dated 31 January 2020; and proof of service dated 3 February 2020; and
 - 1.3.4. A Section 11 notice sent to the local authority; with proof of service on 24 April 2020.
- 1.4. On 7 May 2020, the tribunal's administration obtained the title sheet for the Property (AYR66270) which shows that the Applicants are the registered proprietors.
- 1.5. On 14 May 2020, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 6 July 2020 of the date, time and arrangements for a Case Management Discussion ("CMD") teleconference in relation to the Application on 11 August 2020 at 1400h. The Respondent was invited to make written representations in response to the Application by 27 July 2020. The parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.6. The Application documents and notification of CMD were served on the Respondent by Sheriff Officers.

1.7. The Respondent did not submit any representations or make any contact with the tribunal prior to the CMD.

2. CMD: 11 August 2020 at 1400h, teleconference

2.1. Mrs Weir of the Applicants' Representative attended on behalf of the Applicants.

2.2. The Respondent attended.

2.3. The Applicants' Representative produced a copy of an updated rent statement which she advised had been sent to the tribunal's administration yesterday. A copy was forwarded to the tribunal and the Respondent provided his email address and consented to a copy being forwarded to him.

2.4. The Respondent stated at the outset that he knew he was getting evicted and just want to know what day he has to be out for.

2.5. The tribunal Chair explained the purpose of the CMD in terms of Rule 17 of the 2017 rules, namely to explore how the parties' dispute may be most efficiently resolved.

2.6. Applicants' Representative's submissions

2.6.1. Mrs Weir referred to the Private Residential Tenancy agreement between the parties which provided for rent to be paid at the rate of £436.86 every four weeks. The start date of the tenancy was 14 April 2018.

2.6.2. Mrs Weir stated that they had served notice on Mr Burns previously and tried to work with him to bring his arrears back in order. He made some attempt to pay but the arrears increased. By that time the 6 month period had passed so they started again. She stated that he is in £4003.80 of rent arrears at present. The last rent due was due on 28 July 2020. There have been no payments since his payment on 28 January 2020. Mrs Weir referred to the updated rent statement. Referring to the statement she showed the rent due over the period of the tenancy and the payments made by the Respondent. The rent arrears at the time of service of the Notice to Leave on 31 January 2020 were £934.58, up to an including 14

January 2020 and there were three consecutive months' rent arrears. She stated that he has been in arrears since 25 December 2018.

2.6.3. The Applicant's Representative asked the tribunal to make an eviction order on the basis that the current arrears balance is £4003.80 which is at least one month's rent and that the Respondent has been in continuous arrears for over three months. She stated that a valid Notice to Leave had been sent and submitted that the tribunal should issue an eviction order today on the basis that the test in ground 12 has been met.

2.6.4. She stated that there had been a meeting at the Property with the Respondent in January 2020, in which he had been told that the Applicants were intending to proceed with the eviction process because enough chances had been given. They discussed notice dates at that time and told him when he should remove from the Property.

2.6.5. Mrs Weir stated that to her knowledge Mr Burns is still in employment with East Ayrshire Council.

2.7. Respondent's submissions

2.7.1. The Respondent stated that he does not oppose the application for an eviction order. He stated that he knows that he is getting put out. He stated that he accepts the figures in the rent statement with the Notice to Leave and Application. He also considered the figures on the updated rental statement and accepted that they reflected the amount outstanding on the basis of rent payable every four weeks.

2.7.2. He accepted that he had made no payments since January 2020. He stated that the reason that he has not paid is that he did not want to pay for a house he is getting evicted from. He accepted that he had remained in the Property after being served with the Notice to Leave on 31 January 2020.

2.7.3. He stated that he just wants to know when he is getting evicted.

2.7.4. He stated that he is a bank worker for the Council now, having previously worked in Glasgow.

2.7.5. He repeated that he did not want to oppose the eviction and just wanted to know when he had to move out.

2.8. Applicants' Representative's Response

2.8.1. The Applicants' Representative stated that during her meeting with the Respondent in January 2020, they had discussed notice periods and informed the Respondent when he was required to move from the Property in the Notice to Leave.

3. The tribunal makes the following findings-in-fact:

3.1. There is a Private Residential Tenancy between the Applicants and the Respondent for the Property dated 13 April 2018.

3.2. The start date for the tenancy was 13 April 2018.

3.3. The rent payable is £438.46 every four weeks.

3.4. The Notice to Leave which was served on the Respondent includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.

3.5. At the time of service of the Notice to Leave on 31 January 2020 there had been rent arrears for at least three months, as the Respondent had been constantly in arrears since 15 January 2019 and the rent arrears as at 31 January 2020 were £934.58.

3.6. As at 11 August 2020 there have been rent arrears over a period in excess of three months.

3.7. As at 11 August 2020 there are rent arrears of £4003.80, which is in excess of one month's rent.

3.8. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

4. Reasons

4.1. Because the tribunal was satisfied that there was at least one month's rent arrears as at the date of the CMD on 11 August 2020 and that there had been arrears for a continuous period of three months up to the date of the CMD, the tribunal had to find that Ground 12 applied. The tribunal therefore issued an eviction order in terms of Section 51 of the 2016 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.

Susanne Tanner

Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair

11 August 2020