



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/21/0041

Property : 7 Gateside Gardens, Greenock PA16 7DQ (“Property”)

Parties:

Ashleigh Holburn, 29C Florence Street, Greenock PA16 7JY (“Applicant”)

Nicola Porteous, 7 Gateside Gardens, Greenock PA16 7DQ (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Sandra Brydon (Ordinary Member)

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: an undated Private Residential Tenancy Agreement ; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 21 September 2020 ("Notice to Leave"); copy email from Neill Clerk & Murray, Solicitors to the Respondent attaching Notice to Leave dated 21 September 2020; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 22 September 2020; copy affidavit signed by the Applicant dated 1 February 2021 and sheriff officer's execution of service certifying service of the Application on 11 March 2021.

Case Management Discussion

A case management discussion took place before the Tribunal on 12 April 2021 by teleconference. Both the Applicant and the Respondent were in attendance.

The Tribunal noted that the Notice to Leave did not accord with the revised format introduced by the Coronavirus (Scotland) Act 2020 ("2020 Act") in that the notice periods referred to in the Notice to Leave were incorrect. In terms of paragraph 10 of the 2020 Act this did not render the Notice to Leave invalid but the Notice to Leave could not be relied upon for the purpose of seeking an order for possession until the date it could have been relied upon had it been correctly completed.

The Tribunal noted that there were 3 grounds relied upon in the Notice to Leave. Ground 4, which required 3 months' notice, but also grounds 11 and 12 each of which required 6 months' notice. The Application had been made to the Tribunal a little over 4 months since the date of service of the Notice to Leave. The Tribunal referred the Applicant to section 52(4) of the Act which provides that the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers it reasonable to do so. The Tribunal asked the Applicant to address them on the point.

The Applicant told the Tribunal that her solicitor had drafted the Notice to Leave. She said that it was reasonable for the Application to be considered because the Respondent had occupied the Property for 9 months and had paid no rent and because she required to meet the mortgage payments on the Property despite receiving no rent whilst also paying rent herself to her father with whom she was living.

The Applicant told the Tribunal that she required to live in the Property. She had let the Property as she had been offered a job in Australia. Due to the Covid pandemic, the job offer was withdrawn. She was living with her father, but that was not sustainable.

The Applicant told the Tribunal that the Respondent was in rent arrears totalling £5,400.

The Respondent told the Tribunal that she understood the Applicant's point of view but when she moved into the Property she understood that the lease was to be for a period of 3 years. She had spent money decorating the Property and on the garden. She said she would not have spent that money if the tenancy agreement could be brought to an end at any time. The Respondent said that she had difficulties with employment during the Covid pandemic. She had recently gone back into employment. The Respondent told the Tribunal that she had been looking for alternative accommodation but it had been difficult to arrange viewings.

As regards the rent arrears, the Respondent told the Tribunal that she had asked the Applicant a number of times to confirm the outstanding amount. The Tribunal noted that the rent was £600 per month payable on the last of each month. The first rent

fell due on 31 August. The Tribunal asked the Respondent to confirm what she had paid. The Respondent said that she had paid the deposit and the first month's rent.

The Tribunal asked the Respondent if she had investigated the possibility of obtaining benefits to assist with payment of rent. The Respondent said that she had reached out to Universal Credit. She said that she received hardly enough to live on.

The Tribunal asked the Applicant to state her position as regards the rent paid. The Applicant said that only £300 had been paid in respect of the deposit. She said that no rent had been paid. She disputed that the rent due on 31 August 2020 had been paid. She said that Inverclyde Council had contacted her to ask about the rent arrears.

The Tribunal asked the Respondent if she disputed that the Applicant wished to live in the Property. She said that she was not in a position to dispute that. She said however that she had nowhere else to go. She could not live with her parents as they are shielding.

The Tribunal asked the Respondent if she had paid the rent due in September, October, November and December 2020 or January 2021. She said that she had not paid it. The Tribunal noted that the rent was £600 per month which meant that the arrears were £3000 at the date of the Application. The Tribunal asked the Respondent if she agreed with that and she said that she did.

The Tribunal asked the Applicant if parties had agreed that the tenancy agreement would be for 3 years. The Applicant said that was not correct. In any event, the longest she could let the Property would be 2 years which was the length of her proposed stay in Australia. She said that she was aware that a private residential tenancy was not for a specified period. She knew that she could not grant a lease for 2 years. She knew this as she had let the Property before using the model form of tenancy agreement.

The Tribunal asked the Respondent if she had read the tenancy agreement. She said that she had and that it was a straightforward lease.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 10 July 2020 ("Tenancy Agreement").
2. The Notice to Leave was issued by email on 21 September 2020. It stated that an application for an eviction order would not be submitted to the Tribunal

before 23 December 2020. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.

3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 22 September 2020.
4. Notice of the date of the case management discussion had been given to the Respondent on 11 March 2021.
5. The Applicant intends to occupy the Property as her only or principal home for at least 3 months.
6. The Respondent has been in rent arrears for three or more consecutive months.

Reasons for the Decision

The Tribunal considered whether to entertain the Application made in breach of section 54 of the Act. The Tribunal considered that in all the circumstances it was reasonable to do so.

The Tribunal then considered whether to grant an eviction order. In terms of section 51 of the Act, 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.

In the Application the Applicant stated that she sought recovery of possession of the Property on the basis set out in Ground 4 which is that the landlord intends to live in the property.

Ground 4 (as amended by the Coronavirus (Scotland) Act 2020) states:

- "(1) It is an eviction ground that the landlord intends to live in the let property.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months."

The Applicant produced an affidavit in which she said that she had let the Property as she was offered a two year secondment requiring her to relocate to Australia. As a result of the Coronavirus Pandemic the secondment had been delayed and then withdrawn. She required the Property back to use as her main residence. The Respondent did not dispute that the Applicant intended to live in the Property. The ground for eviction had been established.

Ground 12 states:

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

The Respondent accepted that rent had not been paid for September, October, November and December 2020 or January 2021. The ground for eviction had been established.

In all of the circumstances the Tribunal determined that it was reasonable to make an Order for possession of the Property in terms of Section 51 of the Act.

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.

**Joan Devine
Legal Member**

Date : 12 April 2021

Joan Devine