



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/19/3894

Re: Property at 66 Braes of Gray Road, Dundee, DD2 5FQ (“the Property”)

Parties:

Dr Hannah Kate Lord, c/o Ward 32, Ninewells Hospital, Dundee, DD1 9SX (“the Applicant”)

Mr David Stokes, Mrs Natalie Stokes, 66 Braes of Gray Road, Dundee, DD2 5FQ; 66 Braes of Gray Road, Dundee, DD2 5FQ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the second-named Respondent, Nicola Stokes)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application dated 6 December 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”). Said application also sought repossession on the basis of ground 11 (being a breach of tenancy agreement) and ground 14 (being antisocial behaviour by the tenant).

- Case Management Discussion
- 2. A Case Management Discussion (“CMD”) took place on 21 July 2020 by way of teleconference. The Applicant was represented by Ms Rae of Thorntons Law LLP. David Stokes, the first-named Respondent, appeared personally. There was no appearance by or on behalf of the second-named Respondent, Nicola Stokes. Mr Stokes confirmed that he was not appearing on behalf of Mrs Stokes. The Tribunal was satisfied that the application had been intimated on the second-named Respondent by way of Sheriff Officer on 20 February 2020 and accordingly the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the second-named Respondent’s absence.
- 3. The Applicant had also submitted a separate application under Rule 111 seeking a payment order for arrears of rent under case reference FTS/HPC/CV/19/3896. This was heard by the Tribunal at the same time.
- 4. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 16 August 2019. There had been a continuous arrear since then. The rent arrears due at the date of the CMD stood at £7,150. The monthly rent was £650. A Notice to Leave had been served on the Respondent on the basis of Grounds 11, 12 and 14 of Schedule 3 to the 2016 Act, on 9 October 2019.
- 5. Mr Stokes advised that when they first took entry to the property the Applicant was not registered with the Local Authority. They got in touch with Dundee City Council and that was thereafter rectified. He accepted that the Landlord was now registered with the Council as a landlord. He advised that prior to moving in the relevant gas safety certificate was not in place, however he advised that had since been rectified. He confirmed that he had shouted at the Applicant’s parents when they attended at the property to remove them from the property as he had felt intimidated by them. There had been no further incidents. He disputed that the arrears stood at £7150 and submitted that a payment of £650 had been made in cash in August 2019 which was not reflected in the rent statement. He accepted that £6500 was due as arrears of rent.
- 6. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement
- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 16 August 2019;
- (ii) In terms of Clause 7 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £650 per calendar month;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Grounds 11, 12 and 14 of Schedule 3 to the 2016 Act, and which was served on 5 November 2019;
- (iv) The Respondent has been in continuous arrears of rent since August 2019;
- (v) The Respondent is in arrears of rent amounting to at least £6,500 at the date of the CMD.

- Reasons for Decision

8. Section 51 of the 2016 Act states as follows:

51 (1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

9. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

10. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD and further that the arrears of rent are an amount which is greater than

the amount due to be paid as one month's rent. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

11. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

12. The Tribunal was not satisfied that an Order should be granted on the basis of Grounds 11 or 14 under Schedule 3. Reference had only been made to one instance of alleged antisocial behaviour. It did not appear that any further incidents had taken place and therefore it would not be reasonable to grant the order on that basis.

- Decision

13. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

21 July 2020

Date