



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/0276

Re: Property at 0/1 5 Queen Street, Paisley, PA1 2TT (“the Property”)

Parties:

Ms Irene McDonald, 174 Glasgow Road, Paisley, PA1 3LT (“the Applicant”)

Miss Abby Drummond, 0/1 5 Queen Street, Paisley, PA1 2TT (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 24 January 2020 the Applicant’s representatives Let It, Glasgow applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. The Applicant’s representatives submitted a copy of the private residential tenancy agreement, Notice to Leave with recorded delivery confirmation of delivery, rent statement, copy emails and phone call log, and Section 11 Notice.
2. By Notice of Acceptance dated 7 February 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned to take place on 30 March 2020.

3. Due to the Covid-19 outbreak the Case Management discussion was adjourned and a further Case Management Discussion assigned to take place by teleconference on 13 July 2020.
4. By email dated 6 July 2020 the Applicant's representatives submitted further written representations advising that the Respondent remained in the property as at 25 April 2020 and that as at 30 June 2020 the rent arrears had increased to £3835.71.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 13 July 2020. The Applicant was represented by Mr Finlay Dunsmore of Let It. The Respondent did not participate. The Tribunal was satisfied that intimation of the Case Management discussion had been sent to the Respondent by post and determined to proceed in her absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
6. Mr Dunsmore advised the Tribunal that the parties had entered into a Private Residential Tenancy Agreement that commenced on 30 July 2018 at a monthly rent of £450.00. The rent had never increased. According to Mr Dunsmore the Respondent had paid her rent timeously until May 2019 when she started to accrue arrears and then from June 2019 the arrears started to increase substantially. Mr Dunsmore said that he and his colleagues had tried to work with the Respondent and made allowances for her being ill and also having difficulties with her bank. He referred the Tribunal to the email correspondence between the Applicant's representatives and the Respondent submitted with the application.
7. Mr Dunsmore went on to say that by December 2019 it had been necessary to serve a Notice to Leave on the Respondent due to the increasing rent arrears. This had been sent by both Recorded Delivery post and email and he referred the Tribunal to the Notice to Leave and delivery receipt from Royal Mail showing it was delivered on 18 December 2019. The earliest date for applying to the Tribunal was stated as being 20 January 2020 and the rent arrears at that time were stated to be £2550.00.
8. Mr Dunsmore confirmed that he had sent a Section 11 Notice to Renfrewshire Council and referred the Tribunal to the copy notice submitted with the application and dated 23 January 2020.
9. Mr Dunsmore confirmed that the Respondent was in receipt of Universal credit and the housing element being paid to the Applicant varied from month to month the last amount paid being £276.71. The rent arrears had increased from the date of service of the Notice to Leave from £2550.00 to £3835.71. He said the Respondent had not made any payment of rent herself for a long time.

10. Mr Dunsmore confirmed he was aware of the change in the law regarding eviction as a result of the Coronavirus (Scotland) Act 2020 and that it was now a discretionary ground for eviction rather than a mandatory ground if the equivalent of more than one month's rent was outstanding at the date of the hearing. Mr Dunsmore accepted that it would be necessary for the Tribunal to consider the parties' circumstances when exercising its discretion as to whether or not it would be appropriate to evict the Respondent from the property.
11. Mr Dunsmore confirmed that the Applicant only had one property with his firm and he did not think she had other properties. He was aware that the property was mortgaged and that whilst the Applicant had said that it was not under immediate threat of being re-possessed the Applicant could not afford to fund the shortfall in the rent indefinitely. As far as he was aware the Respondent was single with no dependent children. She had been ill at some point last year but did not know about her current health. He thought it unlikely she was working as she was in receipt of Universal Credit. He confirmed the property was a two bedroom and that it was possible the Respondent was not receiving benefit to cover the whole rent due to being a single person. He thought the Respondent intended simply to remain in the property until she was forced out. Whilst he understood the Tribunal had a discretion, he thought it unfortunate that the Respondent had not participated in the Case Management Discussion and sought the order for eviction.

Findings in Fact

12. The parties entered into a Private Residential Tenancy Agreement that commenced on 30 July 2018 at a rent of £450.00 per month.
13. The Respondent has accrued rent arrears as at today's Case Management Discussion amounting to £3835.71.
14. The Respondent had accrued rent arrears at the date of service of the Notice to Leave amounting to £2550.00.
15. The notice to Leave was properly served on the Respondent by Recorded Delivery post.
16. Proper intimation of this application was given to Renfrewshire Council by way of a Section 11 Notice.

Reasons for Decision

17. Were it not for the terms of Paragraph 1(3)(i) of Schedule 1 of the Coronavirus (Scotland) Act 2020 the Tribunal would have been obliged to have granted the order for eviction as more than one month's rent was due at the date of the Case Management Discussion and the Respondent had been in arrears of rent for more than three months as at the date of service of the Notice to Leave. However, the Tribunal must now exercise its discretion in determining whether to grant the order sought. In so doing the Tribunal has to balance the

circumstances and interests of both parties. It is unfortunate that the Respondent did not participate in these proceedings. As a result, the Tribunal has had to rely on the fairly scant information that the Applicant's representative was able to provide from his knowledge of the Respondent together with the documentary evidence submitted. It did appear however that the Respondent was receiving less in the housing element of her Universal Credit than the actual rent and was not making any payments towards the arrears herself as a result the debt was continuing to rise substantially. The Tribunal had no evidence before it to suggest that situation was likely to change. The funds that had been held in the Respondent's bank account and that in correspondence she had said she was going to pay had never materialised. Whilst the Applicant was not under immediate threat of having the property re-possessed by the mortgage holders the Tribunal accepted her representative's submission that she could not afford to lose money indefinitely. Therefore, on balance the Tribunal determined that its exercise of discretion should be cast in favour of the Applicant. The Respondent had chosen not to participate in the proceedings the rent arrears were increasing substantially every month and there was no indication that the situation was likely to change and there was now the equivalent of more than 8 months of arrears of rent that had accrued. It was therefore reasonable in the circumstances to grant the order for eviction.

Decision

18. The Tribunal having carefully considered the application and the documents submitted on behalf of the Applicant together with the oral submissions made on the Applicant's behalf finds the Applicant entitled to an order for the eviction of the Respondent from the property in terms of Ground 12 of Schedule 3 of 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.

**Graham Harding
Legal Member/Chair**

**13 July 2020
Date**