



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

Chamber Ref: FTS/HPC/EV/20/0800

Re: Property at 38 Jimmy Sneddon Way, Motherwell, ML1 3YG (“the Property”)

Parties:

Guardian Letting & Sales Ltd, C/O 6 Tullis Street, Glasgow, G40 1HN (“the Applicant”)

Ms Claire Pow, 38 Jimmy Sneddon Way, Motherwell, ML1 3YG (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted

Background

1. By application dated 5 March 2020, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 19 March 2020 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 21 August 2020 and appropriate intimation of that hearing was given to both the landlord and the tenant

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 21 August 2020 via telephone case conference. The applicant was represented by Stuart Girdwood, who is a director of the applicant. The Respondent attended personally
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
5. The tribunal asked various questions of the parties with regard to the application and the grounds for eviction contained within it.
6. The applicant's representative confirmed that he wished the order sought to be granted

Findings in Fact

7. The Applicant is the agent of registered owner of the property, Mr Brian Kelleher. Mr Kelleher and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 23 May 2019
8. The tenancy was a private residential tenancy in terms of the Act
9. The agreed monthly rental was £280
10. On 29 January 2020 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was hand delivered to the respondent and became effective on 27 February 2020.
11. The notice informed the respondent that the landlord wished to seek recovery of possession using the provisions of the Act.
12. The notice was correctly drafted and gave appropriate periods of notice as required by law.
13. The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant had been in arrears of rent for three or more consecutive months
14. Arrears had started to accrue shortly after the commencement of the tenancy and at the date of service of the Notice to Leave amounted to £600.

15. At the date of the lodging of the application arrears amounted to £880,00
16. The tenants had been continuously in arrears from 23 October 2019 until the date of the CMD.
17. The amount of arrears at the date of the CMD were £2,280.00 which exceeded one month's rent
18. The basis for the order for possession was accordingly established.

Reasons for Decision

19. The order for possession was sought by the landlord based on a ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground
20. The tribunal noted the evidence presented on behalf of the landlords with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. No rent has been paid by the tenant since December 2019. Arrears as at the date of the CMD amounted to £2,280.00.
21. At the CMD, the tenant freely admitted that the arrears figure as narrated by the applicant was accurate. She admitted she had failed to make rental payments. The applicant claimed that she only became aware that she was in arrears when she was visited by the letting agent in January. Until that date she believed that her partner was making manual payments via the bank to cover the rent. When asked why she had not then made payments from January onwards she indicated that she had been unwell in February and then had not been working during the coronavirus lockdown. She indicated she was not entitled to universal credit as a partner was still working although he was not making contributions to the household.
22. The landlord's representative indicated that the factors put forward by the tenant did not make any difference to his request for the order. In his view there have been no attempt to pay and no attempt even to contact them to discuss payments. He indicated he had tried to contact the respondent by telephone by visits by letters and by email and he had no response at all
23. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significantly in excess of one month's rent.
24. The ground for eviction was accordingly established and the tribunal was obliged in terms of the provisions of the 2016 Act to grant the order sought. The tribunal explained to the tenant that the ground under which the order was sought was mandatory and the tribunal had no option but to grant the order sought. The tribunal decided to exercise the power within rule 17 of the First-

tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Jim Bauld

21 August 2020

Legal Member/Chair

Date