



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/20/1047

Re: Property at 20 Badenheath Terrace, Mollinsburn, G67 4HL (“the Property”)

Parties:

Miss Laura Stanners, 20 Kirk Place, Condorrat, Cumbernauld, G67 4EE (“the Applicant”)

Ms Louise MacDonald, 20 Badenheath Terrace, Mollinsburn, G67 4HL (“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 9 April 2020 the Applicant’s representatives T C young, Solicitors, 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 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, a rent statement, Notice to Leave, Recorded Delivery confirmation, Section 11 Notice and email to North Lanarkshire Council.
2. By Notice of Acceptance dated 4 May 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management discussion was sent to the Applicant's representatives by post on 15 July 2020 and served on the Respondent by Sheriff Officers on 15 July 2020.
4. The Respondent submitted written representations to the Tribunal by email dated 5 August 2020.

The Case Management Discussion

5. A Case Management discussion was held by teleconference on 13 August 2020. The Applicant was represented by Ms Caldwell from the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal on being satisfied that intimation had been given to the Respondent determined to proceed in her absence in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
6. The Tribunal noted that the Applicant's representative had submitted a current rent statement to the Tribunal administration by email shortly before the commencement of the Case Management discussion. Ms Caldwell explained that the Respondent probably had not received a copy. The rent statement showed the current rent due to be £4465.00 however as the payment date had been amended to take account of the date on which the Respondent received payment of her Universal Credit an adjustment was required. Miss Caldwell said that she calculated that the rent for the period from 28 March 2020 to 16 April 2020 would have been £309.21 and not £495.00 and therefore the amount said to be due fell to be reduced by £185.79 to £4279.21.
7. The Tribunal referred Ms Caldwell to the Respondent's written representations and asked for her submissions on the points made with regards to the validity of the tenancy, the issues regarding the boiler, the withholding of rent and issues around the Respondent potentially facing recoupment of Universal Credit.
8. Ms Caldwell submitted that whilst the address in the tenancy agreement was clearly wrong this was simply a typing error and the parties were in no doubt that the tenanted property was 20 Badenheath Terrace and not number 19. With regards to the fact that the Respondent had been given an English Assured Shorthold Tenancy Agreement rather than a Private Residential Tenancy Agreement Ms Caldwell submitted that all private tenancies entered into after 1 December 2017 were subject to the 2016 Act and therefore a valid Private Residential Tenancy had been created. She submitted the essential elements of the tenancy such as the payment of rent of £495.00 per month were agreed between the parties.
9. Ms Caldwell went on to explain that the Applicant lived in Hong Kong and that she had her client's authority to take instructions from the Applicant's parents. Ms Caldwell went on to say that although there had been a recent issue with the boiler and some parts had been ordered she was not aware of previous

problems referred to in the Respondent's written submissions. It was noted by the Tribunal that it appeared from the written submissions that there were issues between the Respondent and the Applicant's parents and that the Respondent had as a result been communicating directly with the Applicant. It was therefore not clear to the Tribunal if there was perhaps some arrangement in place regarding an abatement of rent as a result of issues with the boiler. Ms Caldwell advised the Tribunal that she had been unable to take a call from her client shortly before the commencement of the Case Management Discussion.

10. Ms Caldwell went on to say that she had anticipated that in light of the Respondent's written submissions the Respondent would have attended the Case Management discussion to offer further explanation as to whether or not she was withholding rent and if so, how much and for how long had the boiler not been working. In the absence of the Respondent Ms Caldwell submitted that as the Notice to Leave had been validly served on the Respondent and as there was more than the equivalent of one month's rent currently outstanding then in terms of Ground 12 of Schedule 3 of the 2016 it was a mandatory Ground that the Tribunal should grant the order for eviction.
11. The Tribunal queried whether there was any merit in the Respondent's concerns that she might have to repay the rent element of her Universal Credit if the Tenancy agreement was not in proper form. Ms Caldwell submitted that as there was clearly a Private Residential tenancy in place this should not be the case.
12. The Tribunal indicated that before making a decision it was necessary to know what if any arrangement had been made directly between the Respondent and the Applicant particularly as the Applicant had tried to speak to Ms Caldwell shortly before the commencement of the Case Management Discussion. At the request of Miss Caldwell the Tribunal adjourned for a short period to allow her to contact the Applicant.
13. Following a short adjournment Ms Caldwell confirmed she had spoken to the Applicant who had said that after the Notice to Leave had been sent the Respondent had contacted her advising there were issues with the boiler. The applicant had agreed to send someone out but this had been unsuccessful. There had then been further emails in which the Respondent had spoken about her concerns about losing her Universal Credit and subsequently after the application to the Tribunal had been issued the Respondent had again been in touch worried about not having water during the Covid-19 outbreak. Ms Caldwell said she had arranged for an engineer to attend and some parts were required for the boiler and these were on order and would be fitted. She understood however that the boiler was working. Ms Caldwell confirmed that the Applicant had agreed to reimburse the Respondent for the cost of the heaters she said she had supplied if the Respondent produced receipts but these had not been forthcoming.
14. Ms Caldwell confirmed once again that her instructions were to seek an order for the eviction of the Respondent.

Findings in Fact

15. The parties entered into a Private Residential Tenancy that commenced on 16 August 2019 at a rent of £495.00 per month.
16. The Respondent fell into arrears of rent from 28 August 2019.
17. A Notice to Leave dated 21 February 2020 was served on the Respondent by recorded delivery post and signed for as delivered on 22 February 2020.
18. At the date of serving the Notice to Leave the Respondent had accrued rent arrears of £2970.00
19. A Section 11 Notice intimating these proceedings was sent to north Lanarkshire Council by the Applicant's representatives on 8 April 2020.
20. The Respondent has accrued rent arrears as at the date of the Case Management discussion amounting to £4279.21.

Reasons for Decision

21. The Tribunal was satisfied from the documents submitted with the application and the oral submissions of Ms Caldwell that the parties entered into a Private Residential Tenancy for the Respondent's lease of the property at a rent of £495.00 commencing on 16 August 2019 with the first payment of rent being due on 28 August 2019. The Tribunal was satisfied that although the tenancy agreement used by the Applicant or her mother was not in the correct form there was no doubt in the mind of the parties that it was intended that the Respondent was renting the property from the Applicant for the monthly rent specified. In the absence of a tenancy agreement in proper form it would have been open to the Respondent to demand written terms from the applicant and on her failing to do so make an application to the Housing and Property Chamber for such terms to be drawn up. The Respondent did not take any such steps. The Respondent has expressed concern in her written submissions that by not having a tenancy agreement in proper form she might be at risk of having to repay her Universal Credit but has offered no submissions in law as to why this should be the case. As the Tribunal is satisfied that a valid Private Residential Tenancy exists it does not accept this submission on the part of the Respondent.
22. The Tribunal noted from the Respondent's written submissions that she claimed that there had been an issue with regards to the gas boiler at the property. The respondent claimed that the boiler had not been repaired by the Applicant and that she had incurred additional cost in purchasing electric heaters and in the cost of having the boiler repaired herself as well as

additional electric costs. The Tribunal noted that these issues had been raised with the Applicant who had been prepared to reimburse the Respondent for any such costs incurred subject to the Respondent producing appropriate receipts. The Tribunal accepted that no such receipts had been sent to the Applicant and the Respondent had not submitted any such documents to the Tribunal.

23. The Tribunal noted that rent was now being paid by Universal credit direct to the Applicant however the rent paid was less than the rent due by some £70.00 per month and arrears continued to accrue and there was no indication from the Respondent that she was in a position to clear the arrears which had increased from the date of service of the Notice to Leave from £2970.00 to £4279.21 at the date of the Case Management Discussion.
24. The Tribunal was satisfied that the Notice to Leave sent to the Respondent complied with the terms of Section 62 of the 2016 Act and was properly served. The Tribunal was also satisfied that the conditions of Ground 12 of Schedule 3 had been met and that as the equivalent of more than one month's rent was outstanding as at the date of the Case Management Discussion it was mandatory the Tribunal should grant the order sought.
25. The Tribunal was satisfied that proper intimation of the proceedings had been given to North Lanarkshire Council by way of a Section 11 Notice.
26. The Tribunal having fully considered the documents submitted in support of the application together with the Respondent's written representations and the oral submissions by Ms Caldwell was satisfied it had sufficient information before it to make a decision without the need for a further hearing.

Decision

27. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from 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.

**Graham Harding
Legal Member/Chair**

**13 August 2020
Date**