



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/20/1630

Re: Property at Flat 1/2 3 Townhead Terrace, Paisley, PA1 2AU (“the Property”)

Parties:

Mr Fred McClurg, Flat 1/1 23 Rosebery Terrace, Glasgow, G5 0AX (“the Applicant”)

Ms Heather McKenzie, Flat 1/2 3 Townhead Terrace, Paisley, PA1 2AU (“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 30 July 2020 the Applicant’s representatives Mellicks, 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, Notice to Leave with proof of delivery, Rent Statement and Section 11 Notice and email to local authority in support of the application.
2. By Notice of Acceptance dated 26 August 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 9 September 2020 and to the Respondent by Sheriff Officers on 10 September 2020.

The Case Management Discussion

4. A Case Management Discussion was held by tele-conference on 7 October 2020. It was attended by the Applicant and the Applicant's representative Ms Minto. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper notice of the Case Management Discussion had been given to the Respondent determined in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to proceed in her absence.
5. Ms Minto referred the Tribunal to her written representations and confirmed that the parties had entered into a Private Residential Tenancy agreement. The tenancy had commenced on 13 July 2019 at a rent of £450.00 per calendar month. Ms Minto said the Respondent had failed to pay rent from 13 November 2019 and a Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act was served by email and recorded deliver and ordinary post on the Respondent on 6 February 2020. Ms Minto confirmed that the tenancy agreement provided that notices would be served by email and referred the Tribunal to the email delivery receipt with the papers. Ms Minto confirmed that intimation of the proceedings had been made to Renfrewshire Council by sending a Section 11 notice by email on 30 July 2020 and referred the Tribunal to the copies with the case papers.
6. Ms Minto advised the Tribunal that she had attempted to communicate with the Respondent in an effort to reach an agreement over payment of the outstanding arrears but all communications had gone unanswered. She had been advised that the Respondent continued to reside in the property. The rent outstanding at the date of making the application was £4084.22 the current rent outstanding was £4434.22 as the Respondent had made some payments since the application was submitted. There had been more than three months of arrears at the date of service of the Notice to Leave. There was currently an amount of rent outstanding greater than the equivalent of one month's rent. As the Notice to Leave had been served prior to the coming into force of the Coronavirus (Scotland) Act 2020 the provisions of that Act did not apply and it was a breach of Ground 12 of Schedule 3 for which eviction was mandatory. Ms Minto asked the Tribunal to grant the order for the eviction of the Respondent from the property.

Findings in Fact

7. The parties entered into a Private Rented Tenancy Agreement that commenced on 13 July 2019 at a rent of £450.00 per calendar month.
8. The Respondent accrued rent arrears from September 2019.

9. A Notice to Leave was sent by email to the Respondent on 6 February 2020. It was also sent by Recorded Delivery and Ordinary post.
10. The rent due by the Respondent at the date of sending the Notice to Leave amounted to £1834.22.
11. A Section 11 Notice was sent to Renfrewshire Council on 30 July 2020.
12. As at the date of the Case Management discussion the rent due by the Respondent amounted to £4434.22.

Reasons for Decision

13. The Tribunal was satisfied from the documentary and oral evidence that there was a Private Residential Tenancy Agreement between the parties at a rent of £450.00 per calendar month. The Tribunal was satisfied that the Respondent fell into arrears in September 2019 and that a Notice to Leave had been served on the Respondent in accordance with the terms of the tenancy agreement on 6 February 2020. Since that time the rent due by the Respondent has continued to increase and although some payments have recently been made the amount outstanding is greater than the equivalent of one month's rent. The Respondent had the opportunity to oppose the application and did not do so. The terms of Ground 12 of Schedule 3 having been met and it being a mandatory ground the Tribunal must grant the order for eviction.

Decision

14. The Tribunal having considered the documents and the oral submissions on behalf of the Applicant 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

Graham Harding
Legal Member/Chair

7 October 2020
Date