



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/20/1699

Re: Property at 34J Lochend Road, Musselburgh, EH21 6BG (“the Property”)

Parties:

Mr William Berry, C/o Beveridge and Kellas Solicitors, 52 Leith Walk, Edinburgh, EH6 5HW (“the Applicant”)

Mr Andrew Munson, 34J Lochend Road, Musselburgh, EH21 6BG (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

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

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 was made by the Applicant's representatives Beveridge & Kellas Solicitors on 7 August 2020.
2. The following documents were lodged to support the application prior to the Case Management Discussion:
 - a. A letter from the Applicant's solicitors dated 4 September 2020 setting out the details of the tenancy agreement
 - b. Schedule of Rent Arrears up to 7 August 2020
 - c. Copy S 11 Notice
 - d. Copy Notice to Leave dated 12 March 2020 together with certificate of service by Sheriff Officers on 13 March 2020 and Notice to Quit- Schedule of Rent Arrears document
3. On 4 November 2020 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on

7 December 2020. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

4. No representations from the Respondent were received by the Tribunal.

B: The Case Management Discussion:

1. The CMD took place on 7 December 2020 by telephone conference call.
2. Neither the Applicant nor the Respondent participated. The Applicant was represented by Ms Harrison from Beveridge & Kellas solicitors.
3. Ms Harrison confirmed that the Applicant cannot locate the tenancy agreement. Her firm had not been involved in drawing up the tenancy agreement. The Applicant states that the tenancy agreement was entered into on 1 January 2019 and the Respondent only paid rent for the first two months in the full sum due of £525 per month payable in advance. Thereafter the arrears started to build up as shown on the Schedule of Rent Arrears lodged. No further payments had been made since the application was lodged and the arrears had now increased to £7,731.15 as at the date of the CMD.
4. Ms Harrison advised that there had been no contact from the Respondent since July 2020, when the Applicant had stated to the Respondent that he was seeking a new tenancy from the Council.
5. The Applicant has no information from the Respondent as to whether the Respondent had applied for any relevant benefits.
6. Ms Harrison moved for the application to be granted.

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 January 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property.
4. The monthly rent for the property is £525 payable monthly in advance.
5. Rent arrears accrued as per the Schedule of Rent Arrears
6. On 13 March 2020 the Applicant served a Notice to Leave and Schedule of Arrears covering the period of 1 January 2019 to 1 March 2020 on the Respondent. Service was carried out by Sheriff Officers.
7. The Notice to Leave states as the date when proceedings can be raised the date of 11 April 2020 and as the ground for the Notice that arrears of rent have built up since March 2019 and the Respondent was in rent arrears over three consecutive months. The attached rent schedule shows arrears accumulating since March 2019 and the sum outstanding as of 12 March 2020 £3,410.00
8. No further payments of rent have been made since.
9. The arrears of rent due and outstanding as at the date of the CMD on 7 December 2020 are £7,731.15
10. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
11. The notice required under S 56 of the Act was issued to the local authority on 7 August 2020.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
 - (ii) reviewing on a point of law,
- a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(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.

Grounds under Schedule 3 of the 2016 Act

Rent arrears

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.

...

(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.

2. The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The Tribunal was satisfied by the information provided by the Applicant's solicitors in the letter of 4 September 2020 that although no tenancy agreement was lodged, the tenancy was in fact a Private Residential Tenancy commencing on 1 January 2019 with a monthly rental charge of £525 per month in advance.

4. In terms of S 54 (2) and (3) of the Act a 28 day notice period applied. As the Notice to Leave was served prior to 7 April 2020 the case is not subject to the provisions of the Coronavirus (Scotland) Act 2020. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 7 August 2020.

5. The Notice to Leave was served by Sheriff Officers on 13 March 2020. The date to be entered as the first day when proceedings could be raised was correctly identified and the Respondent given adequate notice of the reasons for the Notice.

6. The Tribunal found that Ground 12 (2) of Schedule 3 of the 2016 Act applies in this case. This is a mandatory ground of eviction. The Respondent has not made any representations to dispute that the rent was £525 per month and that the arrears had accrued since March 2019 as per the Schedule of Rent Arrears showing the arrears to 7 August 2020. The solicitor for the Applicant confirmed that the arrears as at the date of the CMD were still in excess of one month's rent. This, again, was not disputed. The Respondent has provided no indication to the Applicant or the Tribunal that the arrears of rent were in any way linked to a delay or failure of payment of relevant benefits. Thus the arrears or rent have been accruing over a period of over

21 months with a sum of £7,731.15 outstanding as at the day of the CMD, which is far in excess of the monthly rental charge of £525.

7. The Tribunal accordingly must issue an order for eviction in terms of S 51(1) of the Act. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 7 January 2021.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act

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.

Petra Hennig McFatridge

Legal Member/Chair

7 December 2020
Date