



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/21/0836

Re: Property at Flat 0/2, 7 Well Street, Paisley, PA1 2SS (“the Property”)

Parties:

Badesha Properties Ltd, Keystore, 10 Well Street, Paisley, PA1 2SP (“the Applicant”)

Ms Margaret McGee, Flat 0/2, 7 Well Street, Paisley, PA1 2SS (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application seeking an order for repossession, is refused.

- Background
- 1. An application dated 1 April 2021 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- 2. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement to 1 April 2021

- Case Management Discussion
3. A Case Management Discussion (“CMD”) took place on 14 July 2021 by tele-conference. The Applicant was represented by Mr Nicholson of Penny Lane Homes. There was no appearance by or on behalf of the Respondent. The Applicant’s representative moved for the Order to be granted as sought. It was submitted that the parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 28 February 2020. The Respondent has been in a continuous arrear since then. The most recent rent statement lodged showed an arrear figure of £2057.42 as at 1 April 2021. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 18 September 2020. Said Notice enabled an application to be submitted to the Tribunal from 22 March 2021. The Respondent was still believed to be residing within the Property. She had entered into payment arrangements which had not been adhered to.
 4. The Tribunal had issued a Direction dated 28 May 2021 and which was emailed to the Applicant’s representative on 2 June 2021. This Direction sought information regarding how the Applicant had adhered to the Pre-Action Requirements as set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Said Direction also sought written authority from the Applicant that the Representative was authorised to represent them in the proceedings. The said Direction was not complied with.
 5. The Applicant’s representative confirmed receipt of the email but appeared to have overlooked same. The Tribunal confirmed that it required to see the documentation requested in the Direction before it could consider whether the Order should be granted. The CMD was adjourned to a further CMD to be held on 23 August 2021.
 6. The Tribunal issued a further Direction seeking the following information to be lodged by the Applicant 7 days prior to the next CMD:
 - (i) Evidence of compliance with the pre-action requirements in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020;
 - (ii) Written authority from the applicant that the representative is authorised to act for them in the proceedings;
 - (iii) An up to date rent statement.
 7. A further CMD took place by tele-conference on 23 August 2021. The Applicant was again represented by Mr Nicolson. There was again no appearance by or on behalf of the Respondent.
 8. Prior to the CMD an up to date rent statement and authority to act had been lodged in terms of parts (ii) and (iii) of the Direction issued. Part (i) had again not been complied with. Mr Nicholson advised that he was unsure of what was required and admitted that he was unfamiliar with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 (“the 2020

Regulations”). The Tribunal explained the requirements as set out in the 2020 Regulations. Mr Nicholson advised that it was unlikely that the terms of the 2020 Regulations had been adhered to, as he was unaware of the requirements being in place. It was submitted that the tenant was now paying their rent, and the arrears had reduced to £1440.74. Even if an Order for Eviction was granted, the Applicant did not intend to enforce same so long as the Respondent continued to pay the rent. The Applicant’s motion remained for an Order to be granted.

Outcome

9. The Tribunal refused the Application. In terms of section 12(3B) of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, the Tribunal in considering whether it is reasonable to issue an eviction order against the tenant, *“is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order”*. No evidence was lodged that the pre-action requirements had been complied with at all, and by the applicant’s representative’s own admission it was unlikely that they had been to any great extent as they were unaware of the existence of the 2020 Regulations in the first place. No legal advice on the obligations arising under the 2020 Regulations had been sought by the applicant since the last calling of the application. The Tribunal also noted that the arrears had reduced since the last calling of the application and that the Respondent was now paying the rent. The Tribunal did not consider it appropriate to continue the matter for a third time when it was evident that the Applicant could not produce the evidence previously sought by the Tribunal by way of Direction on two occasions. In all the circumstances, the Tribunal did not consider it reasonable to grant the Order sought.

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.

F Watson

Fiona Watson
Legal Member/Chair

23 August 2021
Date