



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/22/0772

Re: Property at 27 Woodside Place Lane, Glasgow, G3 7RB (“the Property”)

Parties:

MJL Investments Limited, 3 Fitzroy Place, Glasgow, G3 7RH (“the Applicant”)

Mr Allan Hales, 27 Woodside Place Lane, Glasgow, G3 7RB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This was a case management discussion in respect of an application by the Applicant dated 16th March 2022 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 12th November 2020 with a commencement date of 14th November 2020
 - Copy Notice to Leave dated 16th August 2021
 - E-mail sending Notice to Leave dated 16th August 2021
 - Copy S 11 Notice and letter to Glasgow City Council dated 22nd March 2022
 - E-mails to tenant regarding non-payment of rent
 - E-mails to tenant regarding access to property and condition of property
 - Copy notice of increase of rent dated 26th January 2021
 - Photographs of the property and
 - Invoice from Gennaro dated 25th June 2021 re glazing repair

The CMD

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Mr Neil Livingston and Ms Shona McLennan appeared on behalf of the Applicant's representative Douglas Dickson Property Management Ltd.
 4. The Applicant was seeking eviction on two grounds namely Ground 11 and Ground 12 of Schedule 3 to the 2016 Act
 5. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 24th May 2022 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
- Mr Livingstone spoke on behalf of the Applicant and advised that they were seeking an order for eviction of Mr Hales who was the tenant in the Property. He explained that the Respondent had lived in the Property since approximately 2007, and that he accrued rent arrears under a previous lease for which the Applicant successfully sought an order for payment at a previous Tribunal. Despite this he explained that given the Respondent had been furloughed during the pandemic, had some health issues and the Applicants had given the Respondent a further lease by entering into a Private Rented Tenancy which started on 14th November 2020. He advised that payments continued to be erratic and he referred to the most up to date rent statement lodged recently by the Applicant which showed that the sum outstanding was now £6825 and that the last payment was made on 1st February 2022 by the Respondent with no further payments made.
 - The Tribunal questioned the Applicant about when the arrears started and noted that although the rent statement produced could have been clearer there appeared to be no payment after the rent became due on 14th May 2021 and so 3 months were outstanding by 16th August 2021 when the Notice to Leave was sent by e-mail.
 - The Tribunal then explored how the Respondent had broken another term of his tenancy and whether the Applicant was insisting on relying on Ground 11 as well as Ground 12. Mr Livingstone referred to the condition of the Property and to photographs of the mess contained in several rooms in the property and advised the Applicants have had to repair broken windows and have not been able to gain access for some months despite asking the Respondent for access and asking him to clear up the Property so that tradesmen can attend. Mr Livingstone advised that previously when the tenant has struggled to maintain his Property he has eventually cleared it up but there has been no communication now with the tenant for several months despite the Applicant and their representative sending letters, phoning and calling at the Property. He advised though that the Applicant was content to rely on Ground 12 and was not insisting on Ground 11 as a ground of eviction.
 - Mr Livingstone made reference to the numerous attempts the Applicant had tried to come to an arrangement for payment with the Respondent including offering to waive 6 months of rent if the Respondent left without having to come to the Tribunal for an order and advised that the Applicants is a family run business and that they had tried their best to offer support to the Respondent but feel the eviction order is now needed. Mr Livingstone

confirmed the Respondent lives alone in the tenancy and had a job but is not sure of his current employment status.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 14 November 2020.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 16th August 2021 was served on the Respondent by e-mail confirming that no proceedings would be raised before 21st February 2022
4. These proceedings were raised on 16th March 2022 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on Glasgow City Council
6. There were at least 3 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due was initially £735 in terms of the lease and was increased by notice of increase from 14th May 2021 to £750.
8. The current rent outstanding is £6825 including rent due on 14th June 2022.
9. The last payment made was on 1st February 2022 for £735.
10. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision


- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 11 and 12 of Schedule 3 of the Act as the relevant grounds of eviction.
- The Notice to Leave was also accompanied by evidence of how the ground was met namely a rent statement, various e-mails to the Respondent regarding the rent arrears and offers of support and help, photographs of the state of the Property, an invoice from a glazer and e-mails regarding getting access to the Property for inspections..
- Grounds 11 and 12 require 6 months' notice under the rules which applied at the time of the service of the Notice in terms of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 22nd February 2022. This Application is therefore timeous.
- The Applicant withdrew his reliance on Ground 11 during the course of the discussion and so the Tribunal only considered whether the terms of Ground 12 were met namely that the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as one months' rent under the tenancy on the day the Tribunal considers the application and has been in arrears of rent for any amount for a continuous period up to and including that day, of three or more consecutive months. The Tribunal notes the Respondent did not pay the rent due on 14th May 2021 and did not pay on

14th June, 14th July or 14th August meaning there was rent due of £3,000 on the date the Notice to Leave was served and there have been continuous arrears since. The current arrears outstanding are £6,825. The Tribunal accepted that Ground 12 has been met.

- The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Mr Livingstone to be sincere and credible in his response to questions and accepted that he had tried hard to come to an arrangement with the Respondent and to afford him further opportunities to pay his rent. Given the Respondent has made no substantial effort to pay the arrears, has stopped paying any rent recently and has not allowed any access to the landlord to inspect the Property or carry out maintenance checks the Tribunal does find it reasonable to grant the order for eviction. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.
- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application.

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.

 **Jan Todd**

07/07/2022

Legal Member/Chair

Date