



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/22/0802

Re: Property at 1C Innes Park Road, Skelmorlie, PA17 5BA (“the Property”)

Parties:

Mr Colin Galloway, 12 Dog Close, Adderbury, Banbury, OX17 3EF (“the Applicant”)

Mr John Cole, 1C Innes Park Road, Skelmorlie, PA17 5BA (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the applicant against the respondent for the property.
2. The application contained:-

- a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the rent statement
3. The Applicants' agent Ms Wooley from Bannatyne Kirkwood France & Co Solicitors appeared on behalf of the Applicant. There was no appearance by the Respondent. Notice of the case management discussion had been served on the Respondent on 17 May 2022. The tribunal was prepared to proceed with the case management discussion in the absence of the Respondent.

Discussion

4. The Applicant's agent invited the tribunal to grant the order for eviction. She advised that the tenancy had commenced in November 2019. A notice to leave had been served referring to ground 12 - where there had been rent arrears for more than three months. The notice to leave had been served on 15 September 2021 and expired on 18 March 2022. The tenant had not vacated the property. Therefore the applicant had raised recovery proceedings.
5. When the notice to leave was served the arrears were £2650. The current arrears are now £4200. There had been no payments to rent made since October 2021. There had been a payment order granted already in relation to

£2000 of the rent arrears. There had been no engagement by the tenant in those proceedings.

6. The letting agent and applicant had tried to get the tenant to engage and repay the arrears, this had been unsuccessful. There had been very limited response from the tenant. The applicant had complied with the pre-action protocol. The last proper response from the tenant was May 2020, he had contacted the letting agent in June 2022 to advise that his lock was not working, when the letting agent returned the call there was no response from the tenant.
7. She advised that they were unaware if there were any issues with benefits, due to the lack of engagement by the tenant. She advised that it was just the tenant who lived in the property.

Findings in Fact

8. The Tribunal found the following facts established:-
 - a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 13 November 2019.
 - b. Clause 4 of the Tenancy Agreement provides that the rent for the property is £450 per calendar month. It is payable in advance and due on the 13th of each month.
 - c. There was a notice to leave addressed to the Respondent. It contained information for the Respondents as to why an eviction order was sought.

It was dated 15 September 2021. It confirmed that proceedings would not be brought until 18 March 2022.

- d. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
- e. That rent arrears had been outstanding since 13 April 2020.
- f. There appeared to be rent arrears outstanding at the date of the application was made, which totalled £2650 a sum more than one month’s rental due under the tenancy.
- g. There appeared to be rent arrears outstanding at 29 June 2022 totalling £4200, a sum more than one month’s rental due under the tenancy.
- h. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
- i. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

- 9. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
- 10. The ground which the Applicant seeks eviction under is ground 12 rent arrears. Sub paragraph 1 states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. Sub paragraph 2 provides that the Tribunal must find that the ground named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

11. The tribunal finds that there are arrears rent arrears on the account which were in existence for more than three months when the notice to leave was served. There are still rent arrears due. The arrears amount to around 9 months of rent. The rent arrears have been increasing. The respondent has failed to respond to attempts to engage with him about the arrears. The Applicant's agent is not aware that the arrears accrued due to a delay or failure in the payment of relevant benefits. We are aware of no mitigation for the Respondent in this matter.

12. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent we consider that the terms of ground 12 met, and that it would be reasonable to grant an order for possession under Schedule 3 Ground 12 - rent arrears.

Decision

13. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

29 June 2022

Legal Member/Chair

Date