



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/22/1066

Re: Property at 11 F1 County Place, Perth, PH2 8EE (“the Property”)

Parties:

Miss Anisah Mohammed, c/o of A and S Properties, 1 County Place, Perth, PH2 8EE (“the Applicant”)

Mr Arkadiusz Derwich, 11 F1 County Place, Perth, PH2 8EE (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs S Brydon (Ordinary 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 against the Respondent.

Background

1. This is an application received on 12th April 2022 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a tenancy agreement that commenced on 1st October 2020 at an agreed rent per month of £535.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy Notice to Leave dated 14th September 2021 stating that an application for an eviction order would not be submitted before 17th March 2022, with evidence of email service, copy section 11 notice with evidence of service, copy correspondence from the letting agent to the Respondent including pre-action requirement letters and a rent statement.
3. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 26th May 2022.

The Case Management Discussion

4. A Case Management Discussion took place by telephone conference on 12th July 2022. Neither party was in attendance. The Applicant was represented by Ms Kirstie Donnelly, Solicitor.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
6. Ms Donnelly moved the Tribunal to grant an eviction order. Notice to Leave has been served. Ground 12 is met. The Respondent has not paid rent now for a year. The sum outstanding is £5680. The letting agent for the Applicant met the Respondent in the street. He advised that the rent is in his bank account and will be paid when an eviction order is granted. The Respondent is believed to be 32 years old and in employment. He is not in receipt of benefits. He lives alone. The Applicant purchased the Property as an investment. The failure to pay rent is causing her financial hardship.
7. Responding to questions from the Tribunal as to whether any visits had been carried out to the Property by the letting agent, Ms Donnelly said she had not been specifically told of any visits, but she presumed the encounter in the street was as a result of a visit to the Property. There had been a significant amount of correspondence from the letting agent to the Respondent concerning the arrears which had not been answered.

Findings in Fact and Law

8.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st October 2020 at a monthly rent of £535.
 - (ii) Notice to Leave has been served upon the Respondent.
 - (iii) The Respondent has been in arrears of rent for three or more consecutive months.
 - (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
 - (v) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.

- (vi) The pre-action requirements for private residential tenancies have been met.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

9. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant 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; (2) the tenant 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 (3) 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.
10. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
11. The Tribunal is satisfied that Ground 12 has been established.
12. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. The pre-action requirements were met.
13. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
14. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
15. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

16. An eviction order in respect of the Property is granted against the Respondent.

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.

H Forbes

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Legal Member/Chair

12 July 2022

Date