



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/22/1446

Re: Property at Flat 10, 23 Thornhill, Johnstone, PA5 8JQ (“the Property”)

Parties:

SGUK Holdings Ltd, 6 La Petite Piece, La Grande Piece, St Peter, Jersey, JE3 7AE (“the Applicant”)

Mr Maurice McBride, Flat 10, 23 Thornhill, Johnstone, PA5 8JQ (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr L Forrest (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.

Background

1. This is an application received in the period between 17th May and 8th June 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 private residential tenancy agreement that commenced on 1st November 2020 at an agreed rent per month of £420. The Applicant is seeking an eviction order under ground 12.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy Notice to Leave dated 5th April 2022 stating that an application for an eviction order would not be submitted before 6th May 2022, with evidence of service, copy section 11 notice with evidence of service, copy pre-action requirement correspondence to the Respondent and a rent statement.
3. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officers on 27th July 2022.

4. By email dated 9th August 2022, the Applicant's representative lodged an updated rent statement showing rent arrears in the sum of £4225.

The Case Management Discussion

5. A Case Management Discussion took place by telephone conference on 6th September 2022. The Applicant was represented by Mr Robert Nixon. The Respondent was not in attendance.
6. 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 CMD, 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.
7. Mr Nixon said the Respondent had been in touch at the end of last week stating that he would move out of the Property on 5th September 2022, when he would hand back the keys, however, he had not done so, and attempts to contact him had been unsuccessful. The Respondent stated that he was taking advice from the CAB and the local authority, and that he would move in with his sister.
8. Mr Nixon outlined the history to the case. It was his understanding that the Respondent had been a taxi driver and his income had been affected as a result of the Covid-19 pandemic, whereupon he fell into rent arrears. The letting agent had worked closely with the Respondent, contacting him regularly by text, email and telephone to discuss payment options. There had been three or four payment plans entered into following discussion with the Respondent, but these had failed. Pre-action requirement letters had been issued on 20th October 2021, and 11th and 18th January 2022. Eventually, the Applicant considered they had no option but to serve a Notice to Leave.
9. Mr Nixon said the Respondent lives alone. His employment status is currently unknown, as he does not engage with attempts at contact, however, it is believed that he has been in and out of work. There are no direct benefit payments in relation to housing costs being paid to the Applicant.
10. The Tribunal adjourned to consider the case.

Findings in Fact and Law

11.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st November 2020 at an agreed rent per month of £420.
 - (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

12. 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.
13. The Tribunal is satisfied that Ground 12 has been established.
14. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
15. 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.
16. 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.
17. 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.
18. 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

19. An eviction order in respect of the Property is granted.

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.


Helen Forbes

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Legal Member/Chair

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6th September 2022
Date