



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/23/1496

Property : 120 Cullen Park, Cullen Drive, Glenrothes, Fife KY6 2JL (“Property”)

Parties:

Gary Payne, 89 Otley Old Road, Leeds LS16 6HG (“Applicant”)

John Scott, 120 Cullen Park, Cullen Drive, Glenrothes, Fife KY6 2JL (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 29 May 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 5 April 2023 ("Notice to Leave"); copy email dated 5 April 2023 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 9 May 2023; rent statement and communications to the Respondent regarding arrears dated 16, 17, 21 and 27 March 2023. The Tribunal had sight of a sheriff officer certificate of service indicating the application had been served on the Respondent on 11 August 2023.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 13 September 2023 by teleconference. The Applicant was in attendance. There was no appearance by the Respondent. The Applicant told the Tribunal that the rent had not been paid since January 2022. He

said that the current arrears are £6376.69. He said that the Respondent lives in the Property alone. He said that communications had been fine until early 2022 when the Respondent stopped paying the rent and complained about issues at the Property such as there being no carpets. The Applicant said this was incorrect and he had a check-in report showing carpets in place. He said that the boiler broke down in March 2023. It took a period of 2 weeks to replace the boiler with a new one. The Applicant gave the Respondent a credit of £200 against the rent to compensate him. The Applicant said that his mortgage was going up and he had to act in respect of the arrears.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 29 May 2018 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 5 April 2023.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 6 May 2023.
4. At the date of service of the Notice to Leave the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
5. At the date of making the Application, the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 9 May 2023.
7. The Application was served on the Respondent on 11 August 2023.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12A which states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*
- (2) *The First-tier Tribunal that the ground named in paragraph 1 applies if –*
 - (a) *the tenant has accrued rent arrears under the tenancy agreement in respect of one or more periods,*
 - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy agreement when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) *the tribunal is satisfied that it is reasonable to issue an eviction order*

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.

**Joan Devine
Legal Member**

Date : 13 September 2023