



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/23/1654

Re: Property at 27 Kersland Foot, Girdle Toll, Irvine, KA11 1BP (“the Property”)

Parties:

Mr Bryan Hendry, 13 Christie Road, Currie, Edinburgh, EH14 5AD (“the Applicant”)

Mr Christopher Black, 27 Kersland Foot, Girdle Toll, Irvine, KA11 1BP (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

Background

1. This was a case management discussion in respect of an application by the Applicant dated 22nd May 2023 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 16th October with a commencement date of 20th October 2020
 - Copy Notice to Leave dated 14th April 2023
 - E-mail sending Notice to Leave dated 14th April 2023
 - Copy S 11 Notice and letter to North Ayrshire Council dated 22nd May 2023
 - Rent statement showing balance due of £3675 at 20th May 2023
 - Letters to tenant regarding non-payment of rent

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 in attendance on the call and the Respondent was represented by Mr Alistair Meek from Chaps. The Respondent did not attend on the call. The legal member advised that the Tribunal could make any decision today as it could after a full hearing but only if it was fair and appropriate to do so.
4. Prior to the commencement of the CMD the Tribunal clerk advised that a further rent statement had been lodged by the Applicant and sent a copy to the members and Mr Meek.
5. The Applicant advised that they were seeking an order for eviction of Mr Black who was the tenant in the Property. In this application the ground of eviction is Ground 12 A.
6. The Applicant advised that he was married with 3 children and was going to be unemployed in October this year. He advised that the tenant has not paid anything towards his rent since October last year, apart from one payment of £20 which he has received on 3rd August. He advised that he rented the Property to Mr Black as a favour to a work colleague and the rent was very reasonable. He advised that he owns 2 other properties with his brother but one of them is now empty and due to the level of rent arrears on this property he no longer has money to carry out repairs in it.
7. The Applicant advised that the rent arrears have now increased to £4,380, which he advised is an increase since the application was lodged with 3 more rent payments due, payments of £350 being paid by universal credit for 3 months which he explained is now being paid directly to him and one payment by the tenant of £20.
8. The Applicant advised that he has spent a lot of time and effort on this application and previous one he lodged in terms of Ground 12 and advised that this is having a major impact on himself and his family. He requested that the order of eviction be granted and confirmed that if this application was granted he would withdraw the previous and conjoined application under EV/23/0832 as it would be unnecessary.
9. The tribunal then heard from Mr Meek who was now representing the Respondent and who advised that his instructions were not to oppose the application. He advised that the Respondent is now being supported by Chaps and he has been in contact and discussions with the council who have agreed to rehome the Respondent if he is evicted. He confirmed there is no opposition to the question of reasonableness and that the respondent would be given temporary accommodation if the order was granted.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 20th October 2020.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.

3. A notice to leave dated 14th April 2023 was served on the Respondent by e-mail confirming that no proceedings would be raised before 15th May 2023
4. These proceedings were raised on 22nd May 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on North Ayrshire Council
6. There were at least 6 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due is £475 in terms of the lease
8. The current rent outstanding is £4380 and arrears are continuing to accrue.
9. The Respondent has only been able to make one payment of £20 towards arrears.
10. The Applicant is about to be unemployed.

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 12 A of Schedule 3 of the Act as the relevant grounds of eviction.
- Grounds 12 A requires 28 days' notice under the rules which currently apply. The Notice sets out the notice period as expiring on 15th May 2023. This Application was lodged timeously.
- The Tribunal considered whether the terms of Ground 12 A were met namely that the tenant has substantial rent arrears. This ground may be met if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as six months' rent under the tenancy on the day the Notice to Leave was served and the Tribunal finds it reasonable that an order for eviction be granted. The rent statement shows that as of 20th March 2023 the sum due and outstanding prior to the next rent becoming due was £3,075 and the next monthly rent became due on 20th April 2023. The Tribunal notes the Respondent was in arrears of rent to the extent of at least 6 months' rent when the Notice to Leave was served on 14th April and although the Applicant has been receiving payments of £350 from universal credit directly from May 2023 this is still less than the monthly rent and so arrears continue to accrue. The sum due and not paid today is £4,380 which is more than 6 months' rent. The Tribunal accepted that Ground 12 A has been met.
- The Tribunal went on to consider if it was reasonable to grant an order for eviction. The arrears, are now substantial, amounting to approximately 9 months' rent due. The Applicant has sent pre action letters to the Respondent. The Respondent is not objecting to the application and is likely to be rehoused by the Council. In view of the significant level of arrears and given the lack of objection from the Respondent the Tribunal finds 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.

Decision

Order for possession 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.

Jan Todd

29 August 2023

Legal Member/Chair

Date