



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/20/0937

Re: Property at 35 Church Street, Newtyle, PH12 8TY (“the Property”)

Parties:

Mrs Frances Stewart, 28 Tiger Beach Drive, Carnoustie, Angus, DD7 7JT (“the Applicant”)

Miss Kara Anderson, Mr Bradley Downtown, 35 Church Street, Newtyle, PH12 8TY (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

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

Background

1. By application received on 16 March 2020 the Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, copy notice to leave with Post Office certificate of posting, rent statement and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 14 August 2020. Both parties were notified that a case management discussion (“CMD”) would take place by telephone

case conference on 11 September 2020 at 2pm and that they were required to participate.

3. The application called for a CMD on 11 September 2020 at 2pm. The Applicant was represented by Mr Gordon Stewart. The Respondents did not participate and were not represented.

Case Management Discussion

4. Mr Stewart advised the Legal Member that the Applicant seeks an eviction order. He confirmed that the Notice to Leave was sent by recorded delivery post on 5 November 2019. He further advised that the Respondents paid their first months rent in January 2019. They have made no further payments to the rent account since that date. A payment of £800 was made by a relative, on their behalf, in July 2019. That was the last payment made. In terms of the tenancy agreement rent was due at the rate of £450 per month for the first 3 months and £500 per month thereafter. The total sum currently due is £7600. Mr Stewart confirmed that the Respondents are still in occupation of the property. He has had no contact from them. However, he was at the property yesterday and made some enquires with neighbours, who confirmed that the Respondents continue to reside there.

Findings in Fact

5. The Applicant is the owner and landlord of the property.
6. The Respondents are the tenants of the property in terms of a tenancy agreement dated 24 December 2018.
7. The Respondents were due to pay rent at the rate of £450 per month from 5 January until 5 March 2019 and £500 per month since that date.
8. The Respondents have been in arrears of rent since 5 February 2019.
9. The Respondents owe the sum of £7600 in unpaid rent to the Applicant

Reasons for Decision

10. The application was submitted with a Notice to Leave dated 4 November 2019 together with a Post Office certificate of posting which establishes that the Notice was sent to the Respondents on 5 November 2019. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 7 December 2020. The

application to the Tribunal was made after expiry of the notice period. The Legal member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

11. Section 51(1) of the 2016 Act states, “ The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2) The First-tier 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 payable as one months rent under the tenancy on that day, and (ii) has been arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more continuous months, and (b) the Tribunal is satisfied that the tenants 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.”
12. The Legal Member is satisfied, from the rent account lodged with the application, and the information provided at the CMD, that the Respondents now owe the sum of £7600 in unpaid rent. They have been in arrears of rent since 5 February 2019. They have therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave, and the date of the CMD. The sum owed is more than one months instalment of rent. No information has been provided by the Respondents to suggest that the arrears of rent are due to a delay or failure in the payment of a relevant benefit. The Legal Member therefore concludes that the eviction ground has been established.
13. As the Applicant has complied with the requirements of the 2016 Act, and as the eviction ground has been established, the Legal Member determines that an eviction order should be granted.

Decision

14. The Legal Member determines that an eviction order should be granted against the Respondents.

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.



Josephine Bonnar, Legal Member

11 September 2020