



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/22/1697

Re: Property at 67 Westmoreland Street, Flat 1-2, Glasgow, G42 8LJ (“the Property”)

Parties:

Mr Jasbir Singh Virhia, C/O G4 Properties, 52 Albert Road, Glasgow, G42 8DN (“the Applicant”)

Mr Robi-Florian Hendrea, 67 Westmoreland Street, Flat 1-2, Glasgow, G42 8LJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 1 June 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 13 October 2020 at a rent of £375 per month and a Notice to Leave, dated 21 April 2022, with proof of delivery, advising of the Applicant’s intention to apply for an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application would not be made before 23 May 2022. A Rent Statement to 18 May 2022 indicated rent arrears of £1,550. The Applicant advised the Tribunal on 16 August 2022 that the arrears now stood at £975. Various payments had been made by the Respondent in April, June and July 2022

and had been applied to the arrears on the basis of the earliest credit clearing the earliest debit. The rent arrears were cleared up to 12 June 2022. The rent due on 13 June 2022 had only been partially paid (£150 on 1 August) and no rent had been paid for the periods beginning 13 July and 13 August 2022.

The Applicant also provided evidence that the Rent Arrears Pre-Action Requirements (Coronavirus) Regulations 2020 had been complied with. He provided the Tribunal with copies of letters sent to the Respondent on 22 February and 24 March 2022, which confirmed the arrears, indicated willingness to work towards a Payment Plan and signposted the Respondent to sources of help and assistance.

On 24 August 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 14 September 2022. The Respondent did not make any written representations to the Tribunal.

First Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 10 October 2022. The Applicant was represented by Mr Imran Haq and Mr Keith Hassan of G4 Properties, Glasgow. The Respondent was not present or represented. The Applicant's representative told the Tribunal that the arrears now stood at £450. They had been £975 on 13 August 2022 and a further rent payment had fallen due on 13 September 2022, but the Respondent had made two payments, of £500 and £400 in September and October. The Applicant's representatives told the Tribunal that they had reason to believe the Respondent was engaged in unauthorised sub-letting of the Property, but he had told them that he was intending to bring his family over from Romania, at which point the Property would become the family abode. The Applicant still wished an Eviction Order, as the payment of rent had, from the outset of the tenancy, been irregular and inconsistent, often with several months passing between payments. The Respondent had not offered to enter into a Payment Plan.

The Tribunal was reluctant at that stage to issue an Eviction Order in the particular circumstances of this case, where the arrears had been reduced to £450 and the Respondent had indicated to the Applicant's representatives that he intended that the Property become his family home. The next rent was due on 13 October and the view of the Tribunal was that the Case Management Discussion should be continued to a later date, in the hope that the Respondent's plan to bring his family over from Romania materialised and he continued to reduce the rent arrears.

Second Case Management Discussion

A second Case Management Discussion was held by means of a telephone conference call on the morning of 12 January 2023. The Applicant was again represented by Mr Haq and Mr Hassan. The Respondent was not present or represented.

The Applicant's representatives told the Tribunal that the arrears now stand at £925. Two payments had been made since the last Case Management Discussion, namely £400 on each of 14 November and 20 December 2022. They were not aware of whether the Respondent's family had joined him, and they remained concerned that he was engaged in unauthorised sub-letting as they had evidence of there being 7 beds in the Property and different people were calling at their office each time a rent payment was being made. There had been water ingress to the flat beneath, which

had resulted in the involvement of the Environmental Health Department of the local authority, but the Applicant's representatives had been unable to access the Property for inspection, as the Respondent had changed the locks and the outside storm door was padlocked. The Applicant's representatives had been unable to make contact with the Respondent.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, 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, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Respondent had been in rent arrears for three or more consecutive months and that the current arrears exceeded one month's rent. No evidence was provided to suggest the arrears were in any way a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the Pre-Action requirements had been met.

Accordingly, the question for the Tribunal to determine was whether it would be reasonable to issue an Eviction Order.

The Tribunal noted The Respondent had not made any written representations to the Tribunal and had not been present or represented at either Case Management Discussion, so had not provided the Tribunal with any evidence to suggest that he intended to reduce the arrears or that he was in a position to enter into a Payment Plan to do so, or any details of his personal situation that he wished the Tribunal to take into account in arriving at its Decision. He had not engaged with the Applicant at all in relation to the arrears or the present proceedings. The arrears had increased considerably since the date of the first Case Management Discussion.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order 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.

12 January 2023

Legal Member