



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/20/0882

Re: Property at Flat 10, 22 New Street, Clydebank, G81 6DF (“the Property”)

Parties:

Mr Joseph Farquhar, Mr Stephen Farquhar, 46 Netherblane, Blanefield, G63 9JW; 16 Main Road, Paisley (“the Applicant”)

Miss Lyndsay Brien, Flat 10, 22 New Street, Clydebank, G81 6DF (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal 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 11th March 2020, 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 Part 3 of Schedule 3 to the 2016 Act, namely that the rent has been in arrears for three or more consecutive months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the parties, commencing on 25th February 2019 at a rent of £475 per month, a Rent Statement showing arrears as at 28 May 2020 of £2,010.80

with no payments having been made since 21st February 2020, and a Notice to Leave dated 8th November 2019, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order on the ground that the Respondent had been in arrears of rent over three consecutive months and requiring the Respondent to leave the Property by 11th December 2019.

The Applicant provide verification that notice had been given to the local authority of the application to the Tribunal for an eviction order.

On 2nd July 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 23rd July 2020. The application and the letter advising the Respondent of the date for the Case Management Discussion Hearing were served on the Respondent personally by sheriff officers on 3rd July 2020. The Respondent did not make any written representations to the Tribunal.

The Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 7th August 2020. The Applicant's Representative, Mr Stephen McGlone participated in the conference call. The Respondent did not participate and was not represented. The Applicant's Representative stated that the Respondent had made no rent payments since 21st February 2020. He confirmed that the arrears currently outstanding were £2960.80 and asked the Tribunal to grant the Eviction Order without a Hearing.

Findings in Fact

The Tribunal found the following facts established; -

1. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 25th February 2019.
2. The tenancy agreement provided that the rent for the Property is £475 per month.
3. There was a Notice to Leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 8th November 2019. It confirmed that proceedings would not be brought until 11th December 2019. It had been e-mailed to the Respondent on 8th November 2019. The ground in the Notice to Leave was ground 12 – non-payment of rent. It detailed that the Respondent was in arrears of rent over three consecutive months.
4. That there are rent arrears outstanding as today's date totalling at least one month's rental due under the tenancy.

5. The Respondent has made no payments of rent since 21st February 2020. The Respondent has accordingly been in rent arrears for three or more consecutive months.
6. The arrears of rent did not appear to have been caused by any delay or failure in the payment of a relevant benefit,
7. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 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 and that it could determine 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 to the Act applies.

Ground 12 of part 3 of Schedule 3 to the 2016 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 must 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 arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and the Tribunal is satisfied that the tenant's being in arrears over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied that the rent had been in arrears for more than three consecutive months, that there were arrears as at the date of the Case Management Discussion and that no evidence had been provided to suggest that the Respondent's being in arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was, therefore, of the view that the requirements of Ground 12 had been met.

Decision

The Tribunal determined that the application should be decided without a Hearing and issued 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.

**Yvonne McKenna
Legal Member/Chair**

Date 7th August 2020