



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/20/1112

Re: Property at 6 Birchtree Place, Thornton, Kirkcaldy, KY1 4AU (“the Property”)

Parties:

Mrs Elizabeth Marley, 12 Netherby Park, Glenrothes, KY6 3PL (“the Applicant”)

Ms Natalie Chapman, 6 Birchtree Place, Thornton, Kirkcaldy, KY1 4AU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By Application dated 18 April 2020 the applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of the Tenancy agreement, emails, Notice to Leave, rent statement, bank statement and Section 11 Notice in support of her application.
2. The Applicant’s husband Keith Marley confirmed his consent to the application being in the sole name of the Applicant although the tenancy agreement was in joint names.
3. By Notice of Acceptance dated 3 June 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

4. Intimation of the Case Management Discussion was sent to the Applicant by post on 6 July 2020 and was served on the Respondent by Sheriff Officers on 7 July 2020.
5. By email dated 24 July 2020 the Respondent requested a postponement of the Case Management Discussion. The Tribunal considered the request and refused it as the Respondent did not produce a medical certificate.

The Case Management Discussion

6. A Case Management discussion was held by tele-conference on 10 August 2020. Both parties were in attendance. The Respondent had previously requested an adjournment on account of concerns regarding her mental health. This had been refused as no medical certificate had been produced. The Respondent indicated she was again seeking an adjournment and said that her mental health nurse had sent an email to the Tribunal explaining her condition. The Tribunal was unable to find any trace of any email and determined to proceed with the CMD on being satisfied that it appeared that the Respondent was able to participate in the proceedings.
7. The Applicant asked the Tribunal to grant the order for eviction on the grounds that the Respondent had been in arrears of rent for a period of three months at the time the Notice to Leave had been sent and that arrears had continued to accrue and there were ne arrears amounting to £2750.00.
8. The Respondent said that she disputed the amount of arrears said to have been due when the Notice to Leave was served upon her but that the Notice to Leave was valid and that it was her intention to move from the property as soon as possible. She accepted that there was more than the equivalent of one month's rent outstanding as at the date of the Case Management discussion. The Respondent went on to say that she had been offered a house by Fife Council that was shortly going to be available probably within the next two weeks. If the order was granted and did not come into effect for thirty days, she was sure she would have moved by then.
9. The Applicant said before serving the Notice to Leave she had taken advice from the Scottish Landlords Association and as far as she was aware she had followed the correct procedures and therefore asked the Tribunal to grant the order sought.

Findings in Fact

10. The parties entered into a Private Residential Tenancy that commenced on 2 December 2018 at a rent of £500.00 per calendar month.

11. The Applicant served a Notice to leave on the Respondent by email on 2 March 2020 on the grounds that the Respondent had accrued rent arrears over three consecutive months.
12. The Respondent accepted that the Notice to Leave was valid.
13. There was more than the equivalent of one month's rent due by the Respondent as at the date of the Case Management discussion.
14. The Applicant sent a Section 11 Notice to Fife Council at the commencement of these proceedings.

Reasons for Decision

15. The Respondent failed to make full payment of the rent due on 2 December 2020 and also on 2 January 2020 and 2 March 2020 at which point the Applicant served a Notice to Leave under Grounds 11 and 12 of Schedule 3 of the 2016 Act. Although the Respondent has taken issue with the amount of arrears said to be due, she does not dispute that arrears were due when the Notice to Leave was served nor does she dispute the validity of the Notice to Leave. The Respondent also accepts that as at the date of the Case Management discussion the equivalent of more than one month's rent is outstanding. Accordingly, it is a mandatory ground for eviction in terms of the 2016 Act.
16. Furthermore, the Respondent has explained that it is her intention to vacate the property in the very near future having been offered and accepted new accommodation with Fife Council. She has confirmed her intention to move in about two weeks and certainly in less than thirty days.
17. Although the Applicant sought an order under Ground 11 of Schedule 3 of the 2016 Act the only reasons given for seeking eviction was the non-payment of rent. This is specifically excluded from Ground 11 and therefore the applicant must rely on Ground 12. The Tribunal was satisfied that the terms of Ground 12 had been met and that a Section 11 Notice had been sent to Fife Council and therefore determined the order should be granted.

Decision

18. The Tribunal having heard from the parties and being satisfied that it had sufficient information before it to make a decision without a further hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.

Graham Harding
Legal Member/Chair

10 August 2020
Date