



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/19/3521

Re: Property at Flat A Westcroft, Bruce Street, Lochmaben, Lockerbie, DG11 1PB (“the Property”)

Parties:

Novantie Ltd, Grierson House, The Crichton, Bankend Road, Dumfries, DG1 4ZS (“the Applicant”)

Mr Mark Duff, Flat A Westcroft, Bruce Street, Lochmaben, Lockerbie, DG11 1PB (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The Tribunal determined that it would decide the application without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 4 November 2019, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Eviction Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the rent had been in 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 11 October 2018 at a rent of £462.54 per month, a Notice dated 28 June 2019, advising the Respondent of the Applicant’s intention to increase the rent from 1 October 2019 to £473.64 per month, a Rent Statement showing arrears as at 1 October 2019 of £2,709.04 and a copy of a Notice to Leave dated 18 September 2019. No rent had been received since 1 July 2019. The Notice to Leave advised the Respondent that the Applicant was relying on Eviction Ground 12 of Schedule 3 to the Act and stated that no proceedings would be commenced before 19 October 2019.

On 6 January 2020, in relation to a separate action for recovery of rent, the Tribunal received from the Respondent an application for a Time to Pay Direction, in which the Respondent admitted the claim and offered to pay off the arrears at £50 per month. On 11 January 2020, the Applicant intimated to the Tribunal willingness to accept the proposal contained in the Time to Pay Direction application.

A Case Management Discussion in relation to both applications was held on 14 January 2020. The Applicant advised the Tribunal that the Respondent had made payment towards the arrears in November and December 2019 and in January 2020 and, in these circumstances requested adjournment of consideration of the application for a period of six months. The Respondent was present and was in agreement with that request, which was then granted by the Tribunal. The Tribunal specifically noted that it had not at the Case Management Discussion considered the present application on its merits, as it had not been asked to do so.

Case Management Discussion

The adjourned Case Management Discussion was held by way of a telephone conference call on the afternoon of 23 September 2020 and, at the request of the Applicant, the Tribunal allowed one further continuation to enable further enquiries to be made about the Respondent's health and as to whether there had been a delay in payment of Universal Credit.

The continued Case Management Discussion was held by way of a telephone conference call on the morning of 3 December 2020. The Applicant was represented by Mr David Adams, Senior Solicitor, Wheatley Group, of which Dumfries and Galloway Housing Partnership ("DGHP"), the Applicant's parent company, are part. The Respondent did not participate and was not represented in the Case Management Discussion.

The Applicant's representative told the Tribunal that no payments of rent had been received since February 2020. He had emailed the Tribunal on 18 November 2020 with an updated Rent Statement showing arrears at that date of £6,747.36 and had advised in that email that, if the rent due on 1 December 2020 had not been paid by the time of the continued Case Management Discussion, the arrears would increase to £7,220. He advised the Tribunal that no payment had been received and asked the Tribunal to issue an Eviction Order. He confirmed that the Applicant had managed to make contact with the Respondent, who had advised that he was receiving Universal Credit.

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 it required and that it would decide the application without a Hearing.

Section 51 of the Act Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in 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 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 of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal noted that the Applicant had stated that arrears as at the date of the continued Case Management Discussion stood at £7,220, which exceeded one month's rent, and that there had been arrears of rent for a continuous period from July 2019. No evidence had been presented to suggest that the Respondent's being in arrears of rent was attributable to any delay or failure in payment of a relevant benefit, as he had confirmed to the Applicant that he was in receipt of Universal Credit. The view of the Tribunal was, therefore, that the requirements of Ground 12 had been met and that the Tribunal was bound to issue an Eviction Order.

As the Notice to Leave on which the application proceeded was dated 18 September 2019, the Tribunal did not have to consider the provisions of the Coronavirus (Scotland) Act 2020.

Decision

The Tribunal determined that it would decide the application 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.

George Clark

Legal Member/Chair

Date: 3 December 2020