



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/20/0866

Re: Property at Flat 16, Jordon House, Nairn, IV12 4BP (“the Property”)

Parties:

Mr Allan Thornton, 5 Braeface, Alness, Highland, IV7 0QP (“the Applicant”)

Mr Duncan Connolly, Flat 16, Jordon House, Nairn, IV12 4BP (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent.

Background

1. The Applicants submitted an application for repossession of the Property from the respondent dated 9th March 2020.
2. In support of their application they lodged the following documents:-
 - a. A copy of the lease dated
 - b. A copy of the Notice to Leave dated 2nd October 2019
 - c. Copy rent statement showing arrears of rent due at March 2020
 - d. A copy of an e-mail confirming service of the Notice to Leave on the Respondent dated 3rd October 2019.
 - e. Copies of photographs confirming the Notice to Leave was also hand delivered to the Respondent
 - f. S11 notice addressed to Highland Council with an e-mail to Highland Council dated 2nd November 2019

3. The Applicant lodged an updated rent statement showing that on 29th June 2020 the arrears of rent had increased to £5920.
4. A Case Management Discussion (CMD) was held by teleconference in view of the current Covid 19 pandemic, at 10am on 17th August 2020.
5. The Applicant attended the CMD and was not represented.
6. . The Respondent did not attend, nor did anyone appear on his behalf. There had been no reason intimated in advance for his non-appearance nor any request made for a postponement of the CMD. The Tribunal noted that valid intimation of the CMD had been made to the Respondent having seen a certificate of execution of service by Sheriff Officers on the Respondent dated 21st July 2020. The Tribunal delayed the start of the CMD by 10minutes to see if the Respondent was late in joining but he did not join. Accordingly the Tribunal proceeded to hold the CMD in the absence of the Respondent.

The Case Management Discussion

7. The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the tribunal can make any decision at a CMD that it can make after a full hearing.
8. There were no written representations received from the Respondent.
9. Mr Thornton confirmed that there have been no further payments of rent since he raised the application and confirmed the Respondent is still resident in the Property. He advised that in his last conversation with the Respondent, around March 2020, the Respondent advised he was not going to pay any rent although he appeared to have some benefits paid to him.
10. The Applicant confirmed, as noted in the rent statements lodged with the application and the two subsequent rent statements sent in by the Applicant with a request to increase the sum claimed, that the sum outstanding as at 29th June 2020 is £5920. The Applicant advised that the Respondent has only paid the first month's rent and then a further £100 in May 2019 and has not paid anything since then. The Applicant confirmed he was seeking an order for repossession today.
11. The legal Member raised the matter of the fact that the Notice to Leave had included a rent statement that showed rent due up to March 2020 as not being paid and that this was obviously in advance of the date of the Notice to leave although the rent statement also showed the arrears outstanding at the date of the application were £4200 and at the date of the Notice to Leave were £1,620 more than 3 months in arrears. The Notice to Leave also referred to no rent having been paid since May 2019. The Applicant could not explain why this was included in the Notice to Leave but did advise he was working full time, works long hours and finds the tribunal process complex.
12. The Applicant also confirmed he had waited until after the winter to apply for eviction of the Respondent. He believes the Respondent has no intention of paying the arrears or rent going forward and seeks an order to evict him.

Findings in Fact

13. The parties entered into a lease of the Property which commenced on 29th April 2019.
14. The Rent due in terms of the lease is £430 per calendar month payable in advance
15. The tenant is still living in the Property
16. The Applicant produced a statement of rent showing that since 29th May 2019 rent has been continually in arrears.
17. There were over 3 months' rent outstanding at the date of service of the Notice to Leave .
18. As at the date of the Application there was £4200 of rent outstanding.
19. Today the rent outstanding is £5920 which is over 3 months' rent.
20. The arrears of rent are not wholly or partly due to a delay or failure in payment of a relevant benefit.
21. A notice to leave was served on the Respondent on 3rd October 2019 by e-mail confirming that no proceedings would be raised before 3rd November 2019
22. These proceedings were raised on 9th March 2020 and the application included a copy of the Notice to Leave.

• **Reasons for Decision**

23. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant ground of eviction.
24. The Notice to Leave was also accompanied by evidence of how the ground was met namely the rent statement showing arrears due from 31st May 2019.
25. The Notice also set out the relevant notice period which expired on 3rd November 2020
26. The Application was lodged on 9th March 2020 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefor complies with Section 55 of the Act.
27. Ground 12 of Schedule 3 of the Act states "
 - i. It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
 - ii. The First Tier Tribunal must find that the ground named by subparagraph (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 is
 - i) 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
 - ii) 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

iii) 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."

28. The Tribunal accepted the verbal averments and written statement of rent arrears from the Applicant who was credible in his evidence of the Respondent having failed to pay the rent throughout the majority of the duration of the tenancy.

29. The Rent statements lodged and the verbal submissions confirmed that the rent outstanding as at today's date amounts to more than one month's rent and that arrears have been due and owing for more than 3 months.

30. There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 12, is met, the Tribunal has no discretion and therefore determined that the order for eviction sought by the Applicant should be granted.

- **Decision**

The Tribunal grants the order for possession 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.

Jan Todd

Legal Member/Chair

Date: 17th August 2020