



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 56(1) of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/EV/20/1127

Re: Property at 17A St Marnock Street, Kilmarnock, KA1 1DZ (“the Property”)

Parties:

Mr Douglas Johnston, Mrs Nicola Johnston, 18 Millers Vale, Wombourne, Wolverhampton, WV5 8HR; 18 Millers Vale, Wombourne, South Staffordshire, WV5 8HR (“the Applicant”)

Mr John Kerr, 17A St Marnock Street, Kilmarnock, KA1 1DZ (“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 24th April 2020.
2. In support of their application they lodged the following documents:-
 - a. A copy of the lease dated 19th October 2018
 - b. A copy of the Notice to Leave dated 20th February 2020
 - c. Copy rent statement showing arrears of rent due at 17th April 2020 of £937.57
 - d. A copy of service of the Notice to Leave on the Respondent by sheriff officers dated 19th February 2020
 - e. S11 notice addressed to East Ayrshire Council dated 24th April with accompanying e-mail to East Ayrshire Council.

3. In view of the delay caused by the current pandemic in scheduling a CMD and given the application and supporting rent statement had been dated February 2020 the Tribunal had issued a direction asking for an up to date rent statement and querying the date of the Sheriff officers service of the Notice to leave which appeared to pre date the date of the Notice to Leave itself.
4. The Applicant's agent clarified by lodging an amended Sheriff officer Certificate of Service, that the Sheriff officer, Colin Wilks, had actually served the Notice to Leave on the Respondent on 20th February 2020. They also submitted an updated rent statement to 24th July 2020 showing the current arrears standing at £1,064.86.
5. A Case Management Discussion (CMD) was held by teleconference in view of the current Covid 19 pandemic, at 2pm on 11th August 2020. The Applicants did not attend but were represented by Mr Scott Crainie of Murphy Scoular letting agent, their representative. 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 9th 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

6. 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.
7. There were no written representations received from the Respondent.
8. Mr Cairnie advised that the position remained as per the Application namely that the Respondent had entered into a lease of the Property from the Applicants, that he had agreed to pay rent in the sum of £161.55 per fortnight has been continually in arrears since the early stages of the lease. He further advised that the sums paid were mostly in respect of universal credit but these have varied over the months and in the early part of 2020 he believed the Respondent obtained a job and the payments reduced. They have since increased and Mr Crainie confirmed that the payments now received amounting to £334.52 per month are from benefits. He confirmed that rent outstanding is currently more than 3 months in arrears and today he confirmed the sum outstanding is £1226.41 there being a further payment due since the last statement.
9. Mr Crainie also confirmed that his agency has had numerous conversations with the Respondent about payment of the arrears but the Respondent has not responded or made further payments. Mr Crainie could not explain why the payments received from universal credit are currently slightly more than the monthly rent due but confirmed that the

Applicants had given the Respondent time to sort this out, the arrears have not reduced substantially and they now wished to get an order to evict him

Findings in Fact

10. The parties entered into a lease of the Property which was dated and which commenced on 19th October 2018
11. The Rent due was £161.55 per fortnight payable in advance
12. The Applicant produced a statement of rent showing that since 16th November 2018 rent has been continually in arrears.
13. There were over 3 months' rent outstanding at the date of service of the Notice to Leave .
14. As at the date of the Application there was £1,009.14 rent outstanding.
15. Today the rent outstanding is £1,226.41 which is over 3 months rent.
16. The arrears of rent are not wholly or partly due to a delay or failure in payment of a relevant benefit.
17. A notice to leave was served on each Respondent on 20th February 2020 confirming that no proceedings would be raised before 22nd March 2020.
18. These proceedings were raised on 24th April 2020.

• Reasons for Decision

19. 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.
20. The Notice also set out the relevant notice period which expired on 22nd March 2020.
21. The Application was lodged on 24th April 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.
22. 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.”

23. The Tribunal accepted the verbal averments and written statement of rent arrears from the Applicant's representative who was credible in his evidence of the Respondent having failed to pay the full rent throughout the majority of the duration of the tenancy.
24. 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.
25. 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.

J Todd

Legal Member/Chair

11th August 2020
Date