



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/19/1900

Re: Property at 35 Maitland Hogg Lane, Kirkliston, EH29 9DU (“the Property”)

Parties:

Mr Connor Lindsay, Thorncroft, Blainslie, Galashiels, TD1 2PR (“the Applicant”)

Mr Thomas William Clark, Mrs Rachel Clark, Mrs Essie Little, 35 Maitland Hogg Lane, Kirkliston, EH29 9DU (“the Respondent”)

Tribunal Members:

John McHugh (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 refused.

Background

The Applicant is the landlord and the Respondent the tenant under a private residential tenancy dated 27 October and 27 December 2018.

The Case Management Discussion

A Case Management Discussion (“CMD”) took place at Riverside House, Edinburgh. The Applicant was present and assisted by Stuart Wilson.

The Respondent was neither present nor represented.

A CMD had originally been fixed to take place on 31 October 2019. It was postponed at the request of the Respondent by reason of the ill health of Mrs Rachel Clark.

On the afternoon of the business day before the rescheduled CMD on 16 December 2019 the Respondent again made a request for postponement by reason of ill health. This was accompanied by a medical certificate to the effect that Mrs Clark was unable to work. The request advised that of the two other persons who are the Respondent, one is her mother who was said to have been grief stricken because of the death of her husband and the other was Mrs Clark's son said to be prevented by reason of mental ill health from being able to attend.

The Tribunal carefully considered the application for a postponement and directed that it would not grant same but that the Respondent should arrange to be present or represented at the CMD and could, if the Respondent so chose, offer further representations on the need for a postponement at that time. The Tribunal had in mind the overriding objective to deal with the application justly and, in particular, the fact the CMD had already been discharged once for the same reason; the last minute nature of the application; the absence of any medical evidence that Mrs Clark or the other individuals were unable to attend the hearing or to instruct a representative and the prejudice to the Applicant in granting a further continuation (including the fact that the Respondent remains in occupation of the Property apparently without paying rent).

The Tribunal had issued a Direction to the parties on 17 November 2019 highlighting that submissions on certain specified issues would be required from the parties at the CMD on 16 December 2019.

Findings in Fact

The Applicant is the landlord and the Respondent the tenant of the Property under a private residential tenancy dated 27 October and 27 December 2018.

The Applicant served a notice to leave on the Respondent on 23 April 2019. It relied upon Ground 12 of Schedule 3 to the 2016 Act. That requires that the tenant has been in rent arrears for three or more consecutive months.

The application referred to the first day of rent being outstanding as 23 February 2019.

Reasons for Decision

The parties had been directed by the Tribunal's Direction of 17 November 2019 to address the Tribunal regarding the effect of the decision in the case of *Majid v Gaffney* UTS/AP/19/2434 dated 17 October 2019 upon the circumstances of the current case.

In the *Majid* case, the Upper Tribunal had approved the decision of the First-tier Tribunal to refuse to consider an application where Ground 12 had been relied upon in a case where the tenant had failed to pay rent on 30 April; 31 May and 30 June 2019. The notice to leave in that case had been dated 1 July. The Tribunal considered that there were not three consecutive months' rent arrears as at 1 July.

The tenant had first fallen into arrears on 30 April and so there would only have been three months' consecutive arrears three months later ie by 30 July 2019.

Exactly the same point arises here. The first date when arrears arose was 23 February 2019. Rent was unpaid on 23 March and 23 April. However, three months consecutive arrears would run three months from 23 February ie three months arrears only came into existence after 23 May 2019. The necessary grounds did not exist when the notice to leave had been served on 23 April 2019.

There is therefore no valid notice to leave in the current application. The notice to leave specified a ground which did not exist at the time of its service. The terms of section 52(3) of the 2016 Act which require the application "to be accompanied by a copy of a notice to leave which has been given to the tenant" cannot be satisfied by the inclusion of the document served in this case. The inevitable effect is that the application must be refused.

Decision

The Application is refused.

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.



John McHugh, Legal Member/Chair

16 December 2019

Date