



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/20/1157

Re: Property at 37 West Pilton Street, Edinburgh, EH4 4JQ (“the Property”)

Parties:

Mr Felix Reid, 40 Cammo Road, Edinburgh, EH4 8AP (“the Applicant”)

Nicole S Willis, Mr Callum Edwards, 210 Crewe Road North, Edinburgh, EH5 2NS; 37 West Pilton Street, Edinburgh, EH4 4JQ (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 6th May 2020 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondents, and provided with his application copies of a private residential tenancy agreement, notices to leave, section 11 notice, rent arrears statement and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondents have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd July 2020, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 17th August 2020 by Tele-Conference. The Applicant did not participate, but was represented by Miss Miller, letting agent. The Respondents both participated, and were not represented.

The Tribunal was invited by Miss Miller with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. She explained that Mr Edwards had been making payments to reduce the arrears, but that as of today's date those still amounted to £2,975.00.

Rental of £695.00 per month is payable in advance in terms of clause 8 of the private residential tenancy agreement, the Respondents had been in arrears of rent for three months as at the date of the notices to leave, and the arrears of rent currently exceed one months' rent.

The First Respondent, Miss Willis, did not oppose the granting of the order sought. She explained that she had left the Property in February 2020, and was no longer living there.

The Second Respondent, Mr Edwards, did oppose the granting of the order. He accepted that the current rent arrears figure was £2,975.00. He accepted that there were three months' rent arrears as at the date of the notices to leave of 4th April 2020. The basis of his opposition was that despite his best efforts, he had been unable to find alternative accommodation, and that he was making efforts to obtain housing benefit and was attempting to reduce the level of arrears.

The Tribunal expressed its sympathy for the Second Respondent's situation, but explained the legal test which it had to apply in the situation which he found himself in. The ground relied upon is mandatory, meaning that the Tribunal had no choice but to grant the order sought.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order 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 (2) 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 (3) 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 is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period in excess of three months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. The Respondents confirmed that they have not been in receipt of housing benefit, though the Second Respondent is currently in the process of applying for that.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

17/08/2020
Date