



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/19/2152

Re: Property at 1 2F2 Balfour Street, Edinburgh, EH6 5BY (“the Property”)

Parties:

Mr Leon Yeung, Flat A, Floor 18, Urban 38, Ko Shing Street, Hong Kong (“the Applicant”)

Mr Redel Malveda Flores, Mr Ashok Tomas, 1 2F2 Balfour Street, Edinburgh, EH6 5BY; 1 2F2 Balfour Street, Edinburgh, EH6 5BY (“the Respondent”)

Tribunal Members:

George Clark (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 decided without a Hearing and issued an Eviction Order.

Background

BY application, received by the Tribunal on 10 July 2019, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 on the Ground that the rent had been in arrears for more than three months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 23 April 2018 at a rent of £700 per month and Notices to Leave dated 7 June 2019, with evidence of their having been sent by e-mail on 7 June 2019 to the Respondents’ e-mail addresses held by the letting agents.

On 4 October 2019, the Tribunal directed the Applicant to provide a rent statement evidencing the level of arrears, the dates on which they were incurred and the months for which they were still outstanding. This information was provided by the

Applicant's letting agents on 11 October 2019 and established that no rent had been paid since the payment due for March 2019 and that the arrears stood at £4,900.

Following a Case Management Discussion on 4 November 2019, the Tribunal, at its own instance, issued a Direction requiring the Applicant to provide evidence of the Notice to Leave having been sent to both Respondents at the e-mail addresses specifically provided for in the tenancy agreement and to provide an explanation for the Respondent, named in the tenancy agreement as Mr Ashok Tomas having been referred to in all subsequent correspondence, including the Notice to Leave, as Kenzo Tomas.

On 22 November 2019, the Applicant's letting agents advised the Tribunal that they had issued, via sheriff officers, fresh Notices to Leave on both Respondents, the second Respondent being correctly named as Mr Ashok Tomas.

Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 15 January 2020. The Applicant was represented by Mr Jamie More of Albany Lettings Ltd, Edinburgh. Mr More sought leave to amend the application to correct the name of the second Respondent from Kenzo Tomas to Ashok Tomas and confirmed that no rent had been paid since the date of the application. He asked the Tribunal to issue an Eviction Order without a Hearing.

The Tribunal agreed to accept the application for amendment on the basis that, whilst the Notice to Leave had contained an error in the first name of the second Respondent, it had been e-mailed on 7 June 2019 to the e-mail address which the second Respondent had provided to the letting agents. This was not the e-mail address shown in the tenancy agreement (a University e-mail address), but there was no evidence to suggest the Notice to Leave had not been received by the second Respondent. The Notice to Leave in respect of the first Respondent was in order. The view of the Tribunal was that it was in the interests of justice to allow the amendment of an administrative oversight on the part of the letting agents, the second Respondent's most recent e-mail address having included the name "kenzotomas".

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

Section 51 of the 2016 Act states that 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 to the Act applies. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent 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 for an Eviction Order on its merits, the tenant is in arrears 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 was satisfied that no rent had been paid since March 2019 and that there was no evidence to suggest that the arrears were in any way attributable to a delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 had been met and the tribunal was bound to issue an Eviction Order.

Decision

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order.

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.

G Clark

Legal Member/Chair

15 January 2020

Date