



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/19/2804

Re: Property at Flat C, 3 Kerr Street, Barrhead, Glasgow, G78 1JS (“the Property”)

Parties:

Mr Artur Szeligiewicz, 0/1, 17 Wiltonburn Road, Glasgow, G53 7JA (“the Applicant”)

Ms Daria Domienika Pniewska, Flat C, 3 Kerr Street, Barrhead, Glasgow, G78 1JS (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.

Background

1. An application was received on 9 September 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 11, 12 and 14 as set out in Schedule 3 of the 2016 Act.
2. The application included: the tenancy agreement between the parties and copy Notice to Leave as required under section 50(1) (a) of the 2016 Act dated 22 July 2019 December 2018, citing grounds 11,12 and 14.

3. Notice of the case management discussion, together with the application papers and guidance notes, had been served personally on the respondent by sheriff officers on behalf of the tribunal on 27 November 2019.
4. No written representations were received from the respondent.

The case management discussion

5. The case management discussion (CMD) was held on 8 January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and gave evidence on his own behalf. The respondent was not present or represented. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her. The tribunal therefore proceeded with the case management discussion in the absence of the respondent.
6. The applicant produced an updated rent statement to the tribunal showing that while some payments had been made since the application was received, the respondent was currently in arrears totalling £3090. The statement showed that the respondent had been in arrears continuously since the start of her tenancy in February 2019.
7. The applicant indicated that he was content to rely on ground 12 only, and asked the tribunal to grant an order against the respondent for recovery of possession of the property.

Findings in Fact

8. The tribunal made the following findings in fact:
 - The applicant is the owner of the property.
 - There was a private residential tenancy in place between the applicant and the respondent. The tenancy commenced on 7 February 2019.
 - The monthly rent payable in terms of the tenancy agreement was £550 per month, payable on the tenth day of each month.
 - The notice to leave was dated 22 July 2019, and the date before which an application for an eviction order would not be submitted to the tribunal was stated as 20 August 2019. The notice appeared to have been signed by the respondent next to the handwritten date 22/07/2019.

- The respondent owed rent arrears of £3090 as at the date of the CMD, and had been in rent arrears continuously since the tenancy commenced on 7 February 2019.

Reasons for Decision

9. As one of the eviction grounds stated in the notice to leave was ground 12, the relevant period was 28 days in terms of section 54(2) (b) of the 2016 Act. The tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act. The applicant stated that the notice to leave had been hand delivered to the respondent, and pointed to the handwritten signature dated 22 July 2019, which appeared to be the same as the respondent's signature on the tenancy agreement.
10. Ground 12 as set out in Schedule 3 of the 2016 Act states:
 - 12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
 - (2) The First-tier Tribunal must find that the ground named by sub-paragraph (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-
 - (i) 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
 - (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
 - (b) 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
11. The tribunal was satisfied on the evidence before it that the requirements for ground 12 were established. It was clear from the rent statements before the tribunal that the respondent was at the date of the CMD in arrears of more than one month's rent, and that she had been in arrears of rent for a continuous period of three or more consecutive months.
12. The tribunal considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a universal benefit, in terms of ground 12 (2) (b). There was no evidence before the tribunal to suggest this, and on the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

13. The tribunal was therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.

Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of the property.

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.



Legal Member/Chair

Date

8/1/20