



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/19/2832

Re: Property at 78C Clydesdale Road, Bellshill, Lanarkshire, ML4 2QL (“the Property”)

Parties:

Mr William Russell, Mrs Yvonne Russell, 23f Elgin Road, Cowdenbeath, KY4 9SF (“the Applicants”)

Mrs Vicki Wharrie, 78C Clydesdale Road, Bellshill, Lanarkshire, ML4 2QL (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent is in arrears of rent by an amount equal or greater than one month’s rent due under the tenancy agreement; has been in arrears for a continuous period of three months; and the arrears are not wholly or partly a consequence of a delay or failure in a relevant benefit.**
2. This was the second case management discussion ‘CMD’ regarding an eviction application in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’, and s51 of the Private Housing (Tenancies) (Scotland) Act 2016, ‘the Act’.
3. The applicants were represented by Ms Michelle Simpson Property Manager of Advance Properties and Rhonda Blair, letting agent from the same company. The respondent did not attend and was not represented. The application and original CMD notice were served on the respondent on 18 November 2019 by depositing

by sheriff officer. Notification of today's adjourned CMD was made by Royal Mail track and trace. The tribunal was satisfied that the respondent had received fair notice in terms of rule 24, and it was fair and just to proceed in terms of rule 29 of the rules.

Preliminary matters

4. The applicants' representatives were seeking a ground 12 eviction today. Ms Simpson produced an up to date rent statement which confirmed that the arrears have increased from £3500 at the last CMD in December 2019, to £4200 as at 1 February 2020.
5. The tribunal noted that the directions made by the tribunal on 18 December 2019 remained outstanding. On that date the tribunal had been minded to grant the eviction but it noted that whilst Mr Russell is the landlord on the private residential tenancy agreement 'PRT', Mrs Russell is the sole owner on the title. The tribunal had sight of a mandate from Mrs Russell authorising Advance Properties to act on her behalf on this matter but required clarification regarding Mr Russell. The tribunal made the following directions. The directions had not been complied with. The directions were sent out on 7 January 2020 and the documents should have been lodged within 7 days of that date:

The applicant is required to provide:

- (1) Confirmation as to why William Russell is named as landlord on the lease.
 - (2) Any documents from which Mr Russell has derived title to be named as 'Landlord' on the lease.
 - (3) Confirmation as to whether Advance Properties are authorised to act on behalf of William Russell.
 - (4) Confirmation as to who the Applicants are in this application: Yvonne Russell; William Russell; or both.
 - (5) Confirmation that William Russell is aware of the application submitted on 10 September 2019.
6. The tribunal raised these issues with the applicants' representatives. The tribunal adjourned to enable them to produce written clarification. They advised that Mr and Mrs Russell are married and jointly run a company. They are registered landlords and they both instruct Advance Properties. Due to an error with the previous agents, this particular PRT was drawn up with Mr Russell as the landlord. After adjourning they emailed a document to the tribunal. This consisted of an email from Mrs Russell with an attachment. The attachment consisted of two notes. One note stated it was from Mr Russell (although it was not signed) which stated:

I William Russell confirm that I am not the owner of the property at 78C Clydesdale Road Bellshill ML4 2QL. My wife owns the property and is the named landlord although we manage all our properties together. We give Michelle Simpson of Advance Properties permission to deal with all management issues and all issues relating of the application to the Scottish Housing Chamber.

The note from Mrs Russell (also unsigned) stated :

I Yvonne Russell confirm that I am the owner of the property at 78C Clydesdale Road Bellshill ML4 2QL. My husband's name has been recorded on the lease by the previous agents so when the file was handed to Advance Properties they were given the wrong information regarding the landlord. However I give my husband full rights to make decisions on the property on my behalf. We give Michelle Simpson of Advance Properties permission to deal with all management issues and all issues relating of the application to the Scottish Housing Chamber.

7. The tribunal was satisfied that this clarified matters. The tribunal went on to consider the application.

Discussion

8. The tribunal had before it the following copy documents:

The tribunal also had the following copy documents:

- (i) Application dated 10 September 2019 and received on that date.
- (ii) The private residential tenancy agreement. 'PRT'.
- (iii) Notice to leave dated 1 August 2019.
- (iv) Proof of service of the notice to leave by sheriff officer dated 2 August 2019.
- (v) Land certificate.
- (vi) s11 notice.
- (vii) Rent statement with arrears as at 1 August 2019.
- (viii) Rent statement with arrears as at 1 February 2020.

9. The tribunal required to be satisfied that the arrears of rent are not wholly or partly due to a failure in payment in a relevant benefit. The applicants' agents confirmed that, as was noted by the tribunal on 10 December 2019, as far as they were aware the arrears were not wholly or partly due to a failure in payment in a relevant benefit. The rent was paid directly to them as agents and there was no portion paid by any benefit.

10. Findings in fact

- (1) The second named applicant is the owner of the property.
- (2) The first named applicant, with the authority of the first named applicant, is the landlord of the property.
- (3) The first applicant and respondent entered into a PRT for let of the property on 1 September 2018.
- (4) The agreed monthly rent was £350.
- (5) Rent arrears began to accrue on 1 March 2019.

- (6) A valid notice to leave was served by sheriff officer on 2 August 2019 which stated that eviction proceedings would not be raised before 1 September 2019.
- (7) There were rent arrears of at least one month's rent of £350 at the date of the notice to leave.
- (8) The rent arrears had been outstanding for at least three months.
- (9) The rent arrears as at today's date have increased to £4200 which is in excess of one month's rent.
- (10) The arrears have been outstanding for more than three months.
- (10) The rent arrears are not due to a delay or failure in a relevant benefit.

Reasons

11. This was an undefended eviction application. The application had been adjourned to enable the applicants' representatives to clarify the above noted preliminary matters. The application was in the name of both Mr and Mrs Russell. Given the information produced today, the tribunal considers it is appropriate for the order to be granted in both names. The tribunal was satisfied that the ground 12 of the Act was met. It was clear that the arrears were not due wholly or partly to a delay or failure in a relevant benefit. Accordingly the tribunal granted the mandatory order sought.

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.

21 February 2020

Lesley A Ward / Legal Member

Date