



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/19/0677

Re: Property at Flat 3/2, 51 Broomlands Street, Paisley, PA1 2NQ (“the Property”)

Parties:

Mr Hendrik Lambrecht, Blavonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant”)

Mr Craig Patterson, Flat 3/2, 51 Broomlands Street, Paisley, PA1 2NQ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for an eviction order dated 8th April 2019 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 Respondent, and provided with his application copies of a short assured tenancy agreement, notice to leave, and section 11 notice with proof of service.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd May 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 24th June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by his mother-in-law, Mrs Janette McLelland. Her friend, Mr Barnett, accompanied her as a supporter. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that the parties had entered into a succession of consecutive short assured tenancies in relation to the Property. The last such agreement was a purported short assured tenancy agreement which was dated 9th August 2018 and commenced on the same date.

In terms of the *Private Housing (Tenancies) Scotland Act 2016* ("the Act"), with effect from 1st December 2017, a residential tenancy such as this entered into between parties from or after that date is a private residential tenancy.

However, in terms of the Act, a purported contract (such as the short assured tenancy agreement here) becomes lawfully constituted as a private residential tenancy if certain criteria set out in the Act and schedule 1 thereto are met.

The Tribunal explained the above to Mrs McLelland, and thereafter addressed those criteria with her to satisfy itself that the agreement between the parties became lawfully constituted as a private residential tenancy agreement. Having done so, the Tribunal was so satisfied.

The Tribunal was invited by Mrs McLelland with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the Act. The notice to leave referred to grounds 11 and 12, and the application to the Tribunal referred to grounds 12 and 13, but Mrs McLelland confirmed that she only sought to rely on ground 12.

The notice to leave dated 8th December 2018 narrated that rent arrears at that time amounted to well in excess of 3 months, accumulated over the preceding six months.

Mrs McLelland confirmed that since 17th May 2019 no further rental payments have been made, and that as of today's date rent arrears have accordingly been accumulating over thirteen months. Rental of £400.00 per month was payable in advance in terms of the tenancy agreement.

The Tribunal was advised by Mrs McLelland that the notice to leave was served personally upon the Respondent on the morning of 8th December 2018 by her brother, Duncan McAlpine, accompanied by his wife Mrs Josephine McAlpine. They had attended that morning at the Property, rang the doorbell, and handed the notice to leave to the Respondent when he answered the door.

The Respondent took the notice to leave from them, but refused to sign an acknowledgement that he had received it when asked to do so by Mr and Mrs McAlpine.

Statement of Reasons

The Tribunal was satisfied that the tenancy agreement entered into by the parties in relation to the Property was sufficient to lawfully constitute a private Residential tenancy in terms of the Act.

The Tribunal was also satisfied that the notice to leave was served personally upon the Respondent validly in accordance with section 26(2)(a) of the *Interpretation and Legislative Reform (Scotland) Act 2010*.

In terms of Section 51 of 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. There has been no evidence to establish any such reason for rent arrears.

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.

Mr Neil Kinnear

Legal Member/Chair

Date

24/06/19