



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/19/1182

Re: Property at 21 Craigard Road, Callander, FK17 8DN (“the Property”)

Parties:

Mr Garth Pearson, C/O Martin and Co, 14 King Street, Stirling, FK8 1AY (“the Applicant”)

Mr Craig Macdonald, 21 Craigard Road, Callander, FK17 8DN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with email evidence of service
 - a copy section 11 Notice
 - a copy of the rent statement
 - written consent by landlord

3. Ms Beryl from Messrs Hill & Robb appeared on behalf of the Applicant. There was no appearance by the Respondent.
4. Notice of the Hearing had been served on the Respondent by sheriff officers on 19 June 2019. As I was satisfied that the Respondent had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in his absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. She confirmed that the notice to leave had been served by email. She advised that the rent arrears were still outstanding and the last payment made was on 18 December 2018 for £500. This payment had been made by the Respondent's guarantor.
6. The notice to leave sought eviction under the ground of rent arrears for 3 consecutive months.
7. She advised that the letting agents had attempted to contact the Respondent with telephone calls and visits to the property to try and get the Respondent to pay the rent and arrears, however they had been unsuccessful in getting him to engage with them. She advised that the arrears were not due in part or wholly due to a delay in benefits.
8. She advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

9. The Tribunal found the following facts established:-
10. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 2 November 2018.
11. Clause 8 of the Tenancy Agreement provides that the rent for the property is £525 per calendar month. It is payable in advance and due on the 2nd day of each month.
12. The notice to leave was addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 7 February 2019. It confirmed that proceedings would not be brought until 10 March 2019. It had been sent to the Respondent by email on 7 February 2019. The notice to leave advised the tenant that he was in arrears of rent.
13. That rent arrears have been outstanding since 2 December 2018.

14. There were rent arrears outstanding at the date of the application in April 2019 which totalled at least one month's rental due under the tenancy.
15. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.

Reasons for Decision

16. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
17. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
18. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
19. Sub paragraph 2 provides that the Tribunal must find that the grounds named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
20. I found that the necessary paperwork had been prepared and served on the Respondent. I found that the terms of sub-paragraph 2 were met. Accordingly, I consider that I must find that the ground in sub paragraph 1 applies; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

21. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

Legal Member/Chair

Date

25-7-19