



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/19/1889

Re: Property at 98 Shaw Street, Larkhall, ML9 1PD (“the Property”)

Parties:

Mr Ross Baxter, 5 Cot Castle Grove, Stonehouse, ML9 3RQ (“the Applicant”)

Mr James McAuley, Mrs Hannah McAuley, 98 Shaw Street, Larkhall, ML9 1PD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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 Respondents.
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 Respondents rent statement
3. The Applicant appeared. There was no appearance by the Respondents.

4. Notice of the Hearing had been served on the Respondents by sheriff officers on 9th July 2019. As I was satisfied that the Respondents had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in their absence.

Hearing

5. The Applicant 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. He confirmed that the notice to leave had been served by recorded delivery mail and he advised that the letter had been signed for, so it had been delivered. He provided an updated rent account and advised that the current level of arrears were £4400. The last rental payment received was in December 2018.
6. The notice to leave sought eviction under rent arrears for 3 consecutive months ground.
7. He advised that the current level of arrears were £4400. He advised that he had served the notice to leave due to the rent arrears. The Applicant had attempted to get the Respondents to pay the rent and arrears, and he had gone to the property in February to talk to them about unpaid rent. This had not led to the rent or arrears being paid.
8. He advised he did not consider that the arrears were due in part or wholly due to a delay in benefits. He advised that the male Respondent was working and he understood that he earned a good wage.
9. He advised me that he had sent the section 11 notice to the local authority to inform them that these proceedings were being brought.
10. He advised that he was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

11. The Tribunal found the following facts established:-
12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 9 January 2018.
13. Clause 8 of the Tenancy Agreement provides that the rent for the property is £550 per calendar month. It is payable in advance and due on the 9th day of each month.
14. The notice to leave was addressed to the Respondents. It contained information for the Respondents as to why an eviction order was sought. It was dated 8 March 2019. It confirmed that proceedings would not be brought until 3 June 2019. It had been sent to the Respondents by recorded delivery

mail on 8 March 2019. The notice to leave advised the Respondents that they were in arrears of rent.

15. That rent arrears appeared to have been outstanding since 9 January 2019.
16. The rent arrears outstanding at today's date total at least one month's rental due under the tenancy.
17. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

18. 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.
19. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
20. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
21. 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.
22. I found that the necessary paperwork had been prepared and served on the Respondents and the local authority. 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

23. The Tribunal grants an order in favour of the Applicant against the Respondents 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

13. 8. 19