



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/3221

Re: Property at 8 Clearburn Road, Gorebridge, Midlothian, EH23 4AX (“the Property”)

Parties:

Mr Thomas Wilson, 13 Sutherland Drive, Kinross, KY13 8BJ (“the Applicant”)

Miss Nicola Harvie, 8 Clearburn Road, Gorebridge, Midlothian, EH23 4AX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Background

1. By application dated 1 October 2019 the Applicant’s representatives Let Right Scotland Limited applied to the Tribunal for an order for eviction of the Respondent arising from alleged rent arrears in respect of the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the Tenancy Agreement, Notice to Leave, Notice to Local Authority a rent statement, copy bank statements copies of recent communications from the Respondent and a letter of authority from the Applicant.
2. By Notice of Acceptance dated 14 November 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management discussion was sent to the Applicant's representatives by post on 6 December 2019 and was given to the Respondent by Sheriff Officers on 10 December 2019.
4. The Applicant's representatives sent further written representations to the Tribunal by email on 17 and 30 December 2019 and 9 January 2020.

The Case Management Discussion

5. A Case Management Discussion was held at Riverside House Edinburgh on 13 January 2020. The Applicant attended along with his representative Miss Maxine Collins of Let Right Scotland Limited. The Respondent did not attend and was not represented. The Tribunal was satisfied that proper notice of the Case Management discussion had been given to the Respondent and determined to proceed in her absence in accordance with Rule 29 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules")
6. Miss Collins confirmed that although the tenancy agreement referred to the rent being £808.00 every four weeks this was in fact an error and the rent was £808.00 per calendar month payable in arrears on the 8th day of each month. She said the Respondent had fallen into arrears almost from the beginning of the tenancy although the arrears had been cleared in March 2019 when benefit payments had been paid directly to the Applicant. Thereafter due to a change in the Respondent's circumstances direct payments had stopped and arrears had again built up. Miss Collins confirmed that the arrears at the date of the application had been the sum then claimed of £2999.32 and that as no further payments had been made the sum now due by the Respondent was £5423.32.
7. Miss Collins referred the Tribunal to the Notice to Leave sent to the Respondent by Recorded Delivery post on 28 August 2019. She explained it had been sent this way as there had been some communication previously with the Respondent where she had indicated she had been unable to open emails and Miss Collins had wished to ensure the Notice had been properly intimated to the Respondent. Miss Collins confirmed that the notice advised the Respondent that the ground for eviction was that the Respondent had been in arrears of rent for three consecutive months. The Respondent had been given a few days more than the statutory 28 days notice allowing for the two days for delivery of the notice.
8. Miss Collins confirmed that the Respondent remained in the property. As the statutory grounds for eviction had been met she asked the Tribunal to grant the order.

Findings in Fact

9. The parties entered into a Private Residential Tenancy Agreement that commenced on 4 May 2018 at a rent of £808.00 per calendar month.

10. The Respondent has not paid any rent since 25 July 2019.
11. As at 1 October 2019 the Respondent had accrued rent arrears amounting to £2999.32.
12. As at the date of the Case Management Discussion the arrears of rent had risen to £5423.32.
13. The Applicant's representatives sent a Notice to Leave by Recorded Delivery post on 28 August 2019. At that time the Respondent was in arrears of rent for three consecutive months.
14. The Applicant's representatives gave intimation of these proceedings to Midlothian Council on 29 October 2019.

Reasons for Decision

15. The Tribunal was satisfied from the documents produced and the oral submissions at the Case Management discussion that the parties entered into a Private Residential tenancy Agreement that commenced on 4 May 2018 at a monthly rent of £808.00 payable in arrears.
16. The Tribunal was also satisfied that the Respondent had failed to make any payment of rent since July 2019 and that she had accrued rent arrears over three consecutive months as at the date of service of the Notice to Leave namely 28 August 2019. The Tribunal was satisfied that in all the circumstances it was reasonable for the Notice to Leave which was in proper form to be served by Recorded Delivery Post as the Applicant's representative could not be certain that the Respondent was receiving emails.
17. The Tribunal was satisfied that as at the date of making the application and at the date of the Case Management discussion the Respondent was still in arrears of rent that was in excess of one month's rent and therefore the terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 had been met. As this was a mandatory ground for eviction the order must be granted the Tribunal being satisfied that proper notice had been given to the local authority and the Respondent.
18. The Tribunal considered that as any order for eviction would not take effect until at least 30 days had past that the tenancy should terminate on 8 February 2019.

Decision

19. The Tribunal finds that the Applicant is entitled to an order for the eviction of the Respondent from the property in terms of 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.

Graham Harding

Legal Member/Chair

13 January 2020

Date