



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/18/3527

Re: Property at Flat B, 14 Nelson Street, Dundee, DD1 2PU (“the Property”)

Parties:

Mrs Margaret O’Shea, 23 Morgan Crescent, Theydon Bois, Epping, CM16 7DU (“the Applicant”)

Mr Scott Dunn, Flat B, 14 Nelson Street, Dundee, DD1 2PU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the eviction order should be granted.

Background:

The application was made on 22 December 2018. The application asked for eviction of the Respondent on the basis of Grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Attached to the application were:

1. Private Rented Tenancy Agreement for tenancy commencing 2 May 2018,
2. copy Notice to Leave dated 23 November 2018 with the date on which proceedings could first be raised stated as 22 December 2018,
3. Certificate of Service for said Notice to Leave by Sheriff Officers confirming service on the Respondent on 23 November 2018,
4. Copy S 11 Notice,
5. Statement of arrears up to and including 2 December 2018 for the property showing arrears as at that date of £2,400.
6. Authorisation letter by the landlord authorising Mr John Marr as her representative dated 20 December 2018.

A Case Management Discussion (CMD) was scheduled for 8 March 2019 and both parties advised of the date, time and venue.

Sheriff Officers served on the Respondent the application and notification of the CMD on 14 February 2019 together with the information that any representations should be lodged by 4 March 2019 and that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had received ample notice of the application and the CMD.

The Applicant's representative, Mr Marr, lodged a rent statement showing that no payments have been made since the application was raised and that the last and only payment made was a payment of £600 on 8 May 2018.

The Case Management Discussion

Mr Marr, attended the hearing on behalf of the Applicant. He advised that as of the date of the CMD the arrears had increased by a further 3 months rent and that the Respondent had not been in contact.

He referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein.

He had already lodged a rent statement showing as the last relevant transaction date from the Respondent the bank credit of £600 on 8 May 2018 and no payments since. This had been intimated to the Respondent by the Tribunal on 1 March 2019.

No payments of rent had been made since 8 May 2019 and the rent as at the date of the CMD was at least 9 months in arrears.

The Legislation, the Private Housing (Tenancies) (Scotland) Act 2016:

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 11 of Schedule 3 to the Act states:

Breach of tenancy agreement

11 (1) It is an eviction ground that the tenant has failed to comply with an obligation under the

tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

Ground 12 of Schedule 3 to the Act states:

Rent arrears

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by 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 payable as one month's rent under the tenancy on that day, and

(ii) 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

(b) 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

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 2 May 2018 (clause 6) and a monthly rent of £300 payable in advance.**
- 2. No payments of rent have been made since a £600 payment on 8 May 2019.**
- 3. The Applicant served on the Respondent a Notice to Leave dated 23 November 2018. This was served by Sheriff Officers on 23 November 2018.**
- 4. It stated as the grounds: "You have breached a term(s) of your tenancy agreement" and "You are in rent arrears over three consecutive months".**
- 5. It detailed that the ground on which the Applicants intend to apply to the First Tier Tribunal was the rent arrears since 2 May 2018.**
- 6. In part 4 it stated that an application would not be submitted to the Tribunal before 22 December 2018.**
- 7. The Respondent has not made any payments towards the arrears since the application was made.**
- 8. On the date of the CMD there are at least 9 months rent, amounting to £2,700 arrears outstanding.**
- 9. This constitutes more than one months rent.**
- 10. As at the date of the CMD the Respondent has been in arrears of rent for the property for over 9 months.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondent and the Respondent did not attend the CMD.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that rent for the months from July 2018 to March 2019 remained outstanding as of the date of the CMD. There was no opposition to the application. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent had opted not to participate in the process.

It was not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent was aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application and no representations were made. The Tribunal on the basis of the updated schedule

accepted that there had been no payments of rent since the payment of £600 on 8 May 2018. As per the tenancy agreement the monthly rent is £300.

The Tribunal was satisfied on the basis of the evidence that the necessary Notice to Leave had been issued with at least one correct ground stated and had been served more than the required 28 days prior to the date stated in Part 4.

The Tribunal considers that Ground 11 of Schedule 3 does not apply as Ground 11 (3) specifically excludes as a relevant breach of the tenancy agreement the non payment of rent and no other breaches were evidenced.

Ground 12 (1) and (2) does apply. The arrears on the date when the Tribunal first considered the merits of the case were in excess of the amount of one month's rent and there had been arrears for a continuous period of over three months.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act and, taking into account the appeal period, specifies a the day on which the private residential tenancy is brought to an end as 8 April 2019.

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.

Mrs Petra Hennig-McFatrige

Legal Member/Chair

8 March 2019

Date