



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/18/2647

Re: Property at 30 Sycamore Row, Fraserburgh, AB43 9AF (“the Property”)

Parties:

Jacqueline Hendry, 23C Maiden Street, Peterhead AB42 1EE (“the Applicant”)

Macrae Stephen and Co, 40 Broad Street, Fraserburgh, AB43 9AH (“the Applicant’s Agent”)

Damien Martin, 30 Sycamore Row, Fraserburgh, AB43 9AF (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the Property against the Respondent

Background

- 1 By application dated 26 September 2018 the Applicant applied to the Tribunal under Rule 109 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent together with the following supporting documentation:-
 - a. Copy Tenancy Agreement between the parties dated 21st March 2018;
 - b. Notice to Leave dated 13th August 2018 together with cover letter.

The Applicant sought recovery of possession of the property under ground 12 of schedule 3 of the Private Tenancies (Scotland) Act 2016 on the basis that the Respondent was in arrears of more than three consecutive months.

- 2 Following requests from the Tribunal, the Applicant provided a Notice under section 11 of the Homelessness (Scotland) Act 2003 that had been served on the local authority and confirmed that the Notice to Leave had been delivered to the Respondent by hand on the 13th August 2018 thereby giving the required twenty eight days notice.
- 3 By Notice of Acceptance of Application dated 11th January 2019, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The Case Management Discussion was thereafter assigned for 6th March 2019. At the Case Management Discussion it was noted that the application paperwork had not been served upon the Respondent. Accordingly the Case Management Discussion was adjourned to 15th April 2019.
- 4 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 27th March 2019. No written representations were received from the Respondent in response.

Case Management Discussion

- 5 The Case Management Discussion took place at Peterhead Sheriff Court on 15th April 2019. The Applicant was represented by Donna Yeats from the Applicant's Agent.
- 6 Ms Yeats confirmed that the arrears outstanding as at the date of the Case Management Discussion were £5400. She had spoken with the Department of Work and Pensions and they had confirmed that the Respondent had been receiving universal credit together with the housing element since August 2018. There had been no contact from the Respondent but he appeared to still be living in the property. The Applicant sought the order for repossession.

Findings in Fact

- 7 The parties entered into a Tenancy Agreement in respect of the Property which commenced on 21st March 2018.
- 8 The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 9 On 13th August 2018 the Applicant's Representative served a Notice to Leave on the Respondent by hand delivery at the Property. In terms of the said Notice, the Applicant sought an eviction order on ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice confirmed that proceedings would be raised no earlier than 12th September 2018.
- 10 The Respondent has failed to make payment of rent since the commencement of the tenancy. The Respondent has therefore been in

arrears for three or more consecutive months. As at the 15th April 2019 the outstanding arrears amount to £5,400.

- 11 The arrears of rent are not wholly nor partly a consequence of a delay or failure in the payment of a relevant benefit

Reasons for Decision

- 12 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that the Respondent had received notice of the application and Case Management Discussion. He had therefore been given the opportunity to make both verbal and written representations in response but had failed to do so.
- 13 The Tribunal accepted that the Respondent had been served with a valid Notice to Leave under section 52(3) of the 2016 Act specifying ground 12 of Schedule 3 of the Act as the relevant ground for eviction. The Tribunal therefore had to consider whether the provisions of ground 12 had been satisfied.
- 14 Ground 12 provides as follows:-
- 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.*
 - 3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

- (a) *for three or more consecutive months the tenant has been in arrears of rent, and*
- (b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- 4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit..."*

15 The Tribunal accepted the Applicant's submission regarding the Respondent's failure to pay rent and noted the outstanding arrears as £5400. The Respondent had not disputed the arrears were due nor was there any suggestion that the failure to make payment was a result of issues with housing benefit or its equivalent. He had not taken the opportunity to make any submissions to the Tribunal in this regard and the Tribunal found the Applicant's position to be credible regarding the history of the tenancy.

16 The Tribunal was therefore satisfied that as at the date of the Case Management Discussion at least one months rent was due and also that the Respondent had been in arrears for more than three consecutive months. The Tribunal therefore considered that the provisions of paragraph (2) of ground 12 had been met and determined to grant the order for repossession sought by the Applicant.

Decision

17 The Tribunal determined to make an order for repossession of the Property against the Respondent.

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.

Ms Ruth O'Hare

Legal Member/Chair

15/4/19

Date