



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/19/3608

Re: Property at 51 Jura Street, Glasgow, G52 1DG (“the Property”)

Parties:

Mr Fadee Jaghleen, 73 Raeswood Crescent, Glasgow, G53 7HE (“the Applicant”)

Mr Charles Livingston, 51 Jura Street, Glasgow, G52 1DG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

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

An eviction order in terms of section 51 and Schedule 3 Ground 12 of the Private Tenancies (Scotland) Act 2016 should be granted as the tenant has been in arrears of rent for three or more consecutive months and the terms of Ground 12 (2) are met in full.

Background

- 1.This is an Application under Rule 109 of the Tribunal Rules for an eviction order under section 51 of the 2016 Act.
- 2.The Application was lodged with the Tribunal on 7 November 2019 and accepted on 10 December 2019.
- 3.A case management Discussion was fixed for 31st January 2020.
- 4.At the Case Management Discussion Mr Fairbridge solicitor attended to represent the Applicant.

5.The Respondent did not attend the case management discussion and Mr Fairbridge requested that the Tribunal proceed in his absence. The Tribunal had sight of an execution of service of the Tribunal papers on the Respondent and was satisfied that the matter could go ahead in the absence of the Respondent in terms of Rule 29 of the Tribunal rules.

6.The Tribunal had sight of the application and paper apart, the tenancy agreement,the Notice to Leave and execution of service, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 together with a letter intimating this document on the local authority. The Tribunal also had a statement of what was said to be rent arrears and bank statements showing a payment of benefit.

7.Mr Fairbridge requested an eviction order. He pointed to the fact that the tenancy had started on 6 December 2017 and the monthly rent payable was £595.The rent arrears statement showed rent arrears starting to build in November 2018 and these had increased to £2665 at the end of August 2019.A back payment of housing benefit in the sum of £758.56 had been received directly from Glasgow city Council on application by the Applicant in September 2019 and arrears had continued to build since that date. As at the start of October 2019 rent arrears amounted to £3096.44 and no further payments had been received since then.

8.Mr Fairbridge advised the Tribunal that the Applicant was aware during the tenancy that Housing Benefit was being used to pay the rent but this had always been paid directly to the Respondent and he had no information to suggest that there had been any delay or failure in the payment of this benefit which had caused the arrears.

9.There was discussion on the Notice to Leave. The execution of service by Sheriff Officer of the document cast some doubt on whether the Respondent still lived at the property. Mr Fairbridge indicated that it was not clear whether the Respondent had left at some stage but he understood some personal effects were still at the property and it was noted that the Sheriff Officer's execution of service of the Tribunal papers, some months later on 3rd January 2020 indicated that it had been established at that time that he was still in residence.

10.The dates in Part 4 of the Notice to Leave were discussed in that the date inserted as the first date when an application to the Tribunal could be made appeared to be three days after the correct date. Mr Fairbridge submitted that this was a minor error which did not render the Notice invalid and asked the Tribunal to apply the terms of Section 73 of the Act and find that that this error did not materially affect the effect of the document. The Tribunal accepted this and took the view that in fact additional Notice had been given to the Respondent and that the Notice to Leave was valid.

11.An eviction order was granted in terms of Schedule 3 Ground 12 of the Act as the rent was continuously in arrears since November 2018 until October 2019 and continued to be in arrears. In addition at the time the Tribunal first considered the merits of the Application more than one month's rent was in arrears.

Findings in Fact

12. The Applicant and Respondent entered into a Private Residential tenancy for the property on 6th December 2017 with monthly rent of £595.

13. Rent arrears started to build at the end of November 2018 and the rent was continuously in arrears from that date until the date of the Application to the Tribunal.

14. Rent arrears have continued to increase since that date. One payment of benefit was made directly to the Applicant in September 2019 direct from Glasgow City Council but this did not cover all of the arrears.

15. The rent arrears were not as a result of a delay or failure in payment of housing or another relevant benefit and such payment were paid direct to the Respondent.

16. At the time when the Tribunal first considered the Application on its merits the rent arrears were in a sum greater than one month's rent.

17. A Notice to Leave in proper form was served on the Respondent on 16th August 2019. A Notice in terms of the Homelessness etc (Scotland) Act 2003 was sent to the appropriate local authority on 7 November 2019.

Reasons for Decision

18. The Tribunal was satisfied that the Notice to Leave here was in the proper form and met the requirements of section 62 of the 2016 Act. Additional days' notice had been given in Part 4 but the Tribunal was satisfied that this did not render the notice invalid as was a minor error as set out in S73 of the Act and gave the Respondent additional notice of a possible application to the Tribunal.

19. The Notice to Leave had been properly served and a S11 Notice was in place. There was some doubt cast by the Sheriff Officer's execution that the Respondent was in residence at the property when the Notice to Leave was served but checks had established a clear connection to the property and as recently as January 2020 the Sheriff Officer serving the papers for the Tribunal application established that the Respondent was still in residence. It therefore seemed reasonable to accept that all documents were properly served on the Respondent.

20. In this Application it seemed clear that benefit had been paid directly to the Respondent and this had not for whatever reason been applied to the rent and substantial arrears over consecutive months had built up. The terms of Ground 12 (2) applied here and its conditions were satisfied making an eviction order mandatory in the circumstances presented.

Decision

21. The Tribunal granted an eviction order in terms of Section 51 of the 2016 Act having been satisfied that for three or more consecutive months the rent for the property has been in arrears and the terms of Ground 12(2), Schedule 3 of the Act are met in full.

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.

Valerie Bremner

Legal Member/Chair

31 January 2020

Date