



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/22/1867

Re: Property at 3 Linden House, Airdrie, North Lanarkshire, ML6 0HD (“the Property”)

Parties:

Rev Andrew Quigley, 340 Garden Glen, Nepean, Ottawa, K2G 1E4, Canada (“the Applicant”)

Mr Fraser McGowan, 3 Linden House, Airdrie, North Lanarkshire, ML6 0HD (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, dated 26 May 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 11, 12, 14 and 15 of Schedule 3 to the 2016 Act, but the Applicant later amended the application so that it proceeded only under Grounds 11 (breach of terms of the tenancy agreement) and 12 (arrears of rent over three consecutive months).

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 3 November 2021 at a monthly rent of £595 with a further payment of £125 per month to the Applicant in respect of a share of the of utilities, internet and ground upkeep costs, and a Notice to Leave, dated 19 April 2022, advising the Respondent that the Applicant was seeking an Eviction Order under Grounds 11 and 12 of Schedule 3 to the 2016 Act and that an

application to the Tribunal would not be made before 21 May 2022. The Notice to Leave stated that the arrears stood at £2,975.

The Applicant's letting agents, Igloo Estate Agents, Hamilton, provided the Tribunal with a log of more than 20 text messages sent to the Respondent, all asking him to contact them to discuss the arrears, letters of 31 January, 11 March and 11 April 2022, inviting him to enter into a payment plan and signposting him to Tenant sources of help, advice and assistance, including Citizens Advice and Shelter Scotland. They also provided details of 3 different payment plans, none of which had been adhered to, and evidence relating to the application under Ground 11 of Schedule 3 to the Act.

On 7 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 28 November 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 8 December 2022. The Applicant was present and was represented by Ms Donna Marie Stewart of Igloo Estate Agents, Hamilton. The Respondent was not present or represented.

Ms Stewart told the Tribunal that the arrears now stand at £7,140 and the Applicant confirmed that the additional payments in respect of utilities were £2,050 in arrears. Both advised the Tribunal that the Respondent had paid nothing, apart from his first month's rent up front.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal noted that the Respondent had failed to comply with a number of agreed payment plans and, indeed, had made no payments whatever by way of rent or the additional payments for utilities, internet and ground maintenance since moving in to the Property. The Respondent had chosen not to be present or represented at the Case Management Discussion and had made no written representations for the Tribunal to consider. The Applicant had shown very considerable patience in attempting to come to an agreement with the Respondent. The arrears are substantial.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to issue an Eviction Order against the Respondent under Ground 12 of Schedule 3 to the Act.

As the Tribunal had made a decision to grant the application under Ground 12, it was not necessary for the Tribunal to consider further the application under Ground 11.

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.

George Clark

Legal Member/Chair

8 December 2022
Date