



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 (hereinafter referred to as “the 2016 Act”) for an Eviction Order.

Reference number: FTS/HPC/EV/20/0559

Property: 65 Dykemuir Street, Glasgow, G21 4LJ

Parties:

Mr Pritpal Singh Khaira, 13 Elm Avenue, Lenzie, G66 4HJ (“the Applicant”)

Mr James Casserly, 65 Dykemuir Street, Glasgow, G21 4LJ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by Lesley McLaughlin, 1-2-Let Letting Agents, 104 Bellgrove Street, Glasgow, G31 1AA.

The Respondent did not attend the Tribunal and no written representations had been received. Service of the Application had been affected appropriately by Sheriff Officer on 20th February 2020.

Karen Kirk

Preliminary Matters

The Tribunal clarified that the evidence lodged confirmed the last payment to rent made by the Respondent was the first month payment of rent in May 2019 of £500. The rent statement lodged shows no further payments made. The tenancy for the property commenced on 5th May 2019. Notice to leave was sent on 9th January 2020.

The Applicant's representative confirmed that the original Private Residential Tenancy agreement signed was given to the Applicant in order to claim benefits and the Applicant has frequently asked for the agreement by return and this has never been returned by the Respondent.

The Applicants representative said her last contact was by telephone 3 or so weeks ago when the Respondent said he was aware of the Tribunal.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an Eviction Order against the Respondents under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Matters Arising

The Tribunal confirmed with the Applicant's representation what knowledge if any they had of any entitlement to any relevant benefit. It was confirmed that the Respondent lived alone and was believed to be working until he became ill and there has never been entitlement or any payment since the first payment of £500 in return for the keys at the outset of the tenancy on 5th May 2019.

The Applicant's representative made oral submissions in support of seeking grant of an order under section 51(1) of the 2016 on the grounds of rent arrears. It was noted the relevant notice in terms of Section 50 (1)(a) of the 2016 had been sent. The relevant notice to the Local Authority had been made with reference to same in the Application. No payments under the tenancy had been made since May 2019. The reasons given to the Applicant were relating to ill health, inability to claim benefits and no reasons for non payment had been given to the Applicant. As at date of the hearing rent due was more than £4000 and no payments of rent had been made since May 2019. Applicant's representative said that there was numerous ongoing text contact between the Applicant and Respondent. The Respondent's neighbours confirmed his residence at the property was ongoing and the last discussion with neighbours to this effect was in December 2019.

Reasons for Decision and Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had received notification of the proceedings by Sheriff Officer on 20th February 2020 and had not challenged same by written representations or attendance.
2. The Applicant sought an Order for Eviction on the grounds of rent arrears.
3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.
4. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
5. Further the Tribunal was satisfied on a balance of probabilities and on the evidence before it that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
6. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
7. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
8. The Tribunal noted the Local Authority under the 2016 had been notified.
9. The fact that the Respondent had purportedly withheld the copy Private Residential Tenancy Agreement from the Applicant was not by itself relevant to whether in the Tribunal's view an Order could be granted in terms of Section 51. The Tribunal had regard to the overriding objective in particular to the duty to deal with matters justly and to avoid delay. In terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 a Private Residential Tenancy was in existence, being one after the commencement date, concerning a property let to an individual as a separate dwelling, as the Respondent's principal home and one which is not excluded in terms of schedule 1 to the Act. In terms of Section 3 the Tribunal noted that a Private Residential Tenancy need not be in writing to constitute a valid contract. Whilst the Applicant's position was that the PRT was in writing but not available it does not in the Tribunals view given the overriding objective and the fact that the full terms of Section 51 of the 2016 were met in full mean an Eviction Order cannot be granted. The terms of Section 51 of the 2016 Act have been fully complied with, the Respondent has had service of the Application and the relevant notices, the Applicant is heritable proprietor of the property and Ground 12 of Schedule 3 to the Act has been established on the basis of one payment of rent being made at commencement of the tenancy in May 2019 to the date of the hearing.
10. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.

Karen Kirk

Legal Member/Chair

Date

5/3/2020.