



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/19/2294

Re: Property at 97 Kincaidston Drive, Ayr, KA7 3XX (“the Property”)

Parties:

Jamie Stewart, 118 Overmills Road, Ayr, KA7 3LQ (“the Applicant”)

Miss Chelsey Dunlop, Mr Kristopher Rowan, 97 Kincaidston Drive, Ayr, KA7 3XX (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondents for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice
 - a copy of the Respondents rental statement
3. The Applicant’s agent Ms Caldwell, from TC Young Solicitors appeared on behalf of the Applicant. There was no appearance by the Respondents.

4. Notice of the Hearing and the application had been served on the Respondents by sheriff officers on 15 August 2019. As I was satisfied that the Respondents had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in their absence.

Hearing

5. The Applicants' representative referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave and evidence of service of it. She confirmed that the notices to leave had been served by recorded delivery. She advised that the Respondents had stopped paying their rent in around April 2019 and there had been no further payments since then. She noted that there had been no written representations received in response to the service of the application for eviction.
6. She advised that each notice to leave sought eviction under Ground 12, rent arrears for a period of more than 3 months.
7. She advised that the current level of arrears were £2,420. She advised that the arrears had gone up since the notice to leave to have been sent to the Respondents. The rent arrears had been on the rent account for a period exceeding three consecutive months.
8. She did not consider that the arrears were due in part or wholly due to a delay in the payment of relevant benefits.
9. The Applicants' representative advised that the Respondents were in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one month's rent, and she did not consider that there were outstanding benefits issues causing the arrears. She submitted therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

10. The Tribunal found the following facts established:-
11. There existed a private residential tenancy between the Applicant and the Respondents. It had commenced on 12 December 2018.
12. Clause 8 of the Tenancy Agreement provides that the rent for the property is £470 per calendar month. It is payable in advance and due on the 12th of each month.
13. There was a notice to leave addressed to the Respondents. It contained information for the Respondents as to why an eviction order was sought. It was dated 11 June 2019. It confirmed that proceedings would not be brought until 12 July 2019. It had been served on the Respondent by email on 11

June 2019. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.

14. That rent arrears had been outstanding since 13 April 2019.
15. There are rent arrears outstanding at today’s date totalling at least one month’s rental due under the tenancy.
16. The arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
17. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

18. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
19. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
20. Sub paragraph 1 states that “It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months.”
21. Sub paragraph 2 provides that the Tribunal must find that the grounds named in 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 payment as one month’s rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
22. I found that the terms of sub-paragraph 2 were met and accordingly, I consider that I must find that the ground in sub paragraph 1 applies; I have found the other statutory requirements to have been complied with; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

23. The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

24 September 2019

Legal Member/Chair

Date