



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/19/3273

Re: Property at 106 Thistle Street, Dunfermline, Fife, KY12 0JA (“the Property”)

Parties:

Mrs Zoe Cargill, 5, The Glades, Penarth, Wales, CF64 3AY (“the Applicant”)

Mr Philip Pringle, 106 Thistle Street, Dunfermline, Fife, KY12 0JA (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.

Background

1. An application was received on 11 October 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 11, 12 and 14 as set out in Schedule 3 of the 2016 Act.
2. The application included: the tenancy agreement between the parties; copies of the Notice to Leave as required under section 50(1) (a) of the 2016 Act dated 10 September 2019, citing grounds 11, 12 and 14, together with proof of sending by email and emailed acknowledgement from the respondent dated 12 September 2019; and rent statement showing the rent arrears due as at 8 November 2019, which was submitted later by the applicant following a request from the tribunal.

3. Notice of the case management discussion (CMD) scheduled for 16 January 2020 by conference call, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 13 December 2019.
4. No written representations were received from the respondent prior to the CMD.

The Case Management Discussion

5. A CMD was held on 16 January 2020 by teleconference at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present, and her husband Mr Scott Cargill was also in attendance. She gave evidence on her own behalf. Around 10 minutes into the CMD (the tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained) the respondent joined the conference call, having had some technical difficulties. The tribunal therefore started the CMD again at that point, and explained the process again, for the respondent's benefit.
6. The respondent told the tribunal that he had been offered a flat by the local authority, and had accepted this. He said that he would be moving out of the property soon. Mrs Cargill told the tribunal that the respondent had made promises to her in the past which had not been kept, and asked the tribunal to grant an order in her favour against the respondent for recovery of possession of the property.
7. She told the tribunal that she was happy to proceed on the basis of ground 12 only. She said that the respondent had not paid rent since 28 June 2019, and was now in 7 months' arrears.
8. The respondent admitted that he owed at least three months' rent arrears to the applicant. He said that he was in receipt of benefits. When asked by the tribunal whether there had been any failure or delay in the payment of these benefits which may have been responsible for his arrears, he indicated that he had been receiving his benefits throughout and there had been no such delay or failure in payment.

Findings in Fact

9. The tribunal made the following findings in fact:
 - The applicant was the landlord in terms of the private residential tenancy agreement between the parties which commenced on 8 February 2019.
 - The title deed for the property showed that the applicant was the sole owner of the property.

- The monthly rent payable in terms of the tenancy agreement was £425 per month, payable on the 8th of each month.
- As the eviction grounds stated in the notice to leave included ground 12, the relevant period in terms of section 54(2) (b) of the 2016 Act was 28 days. The notice to leave was dated 10 September 2019, and stated that an application for an eviction order would not be submitted to the tribunal before 11 October 2019.
- The respondent had been in rent arrears continuously since 8 July 2019 as at the date of the CMD.

Reasons for Decision

10. The tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act.

11. Ground 12 as set out in Schedule 3 of the 2016 Act states:

12 (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.

12. The tribunal was satisfied on the evidence before it that the requirements for ground 12 were established. It was clear from the rent statement before the tribunal that the respondent was at the date of the CMD in arrears of more than one month's rent, and that he had been in arrears of rent for a continuous period of at least three consecutive months. The respondent admitted that he had been in arrears for that length of time.

13. The tribunal then considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, in terms of ground 12 (2) (b). The applicant told the tribunal

that she was not aware of any such issues with benefits, and the respondent said that there had been no delay or failure in the payment of his benefits.

14. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
15. The tribunal was therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.
16. The tribunal chairperson explained to the parties that she was required to grant an order for possession in the circumstances, and that the order could not be enforced until 31 days after the CMD. The respondent indicated that he expected to move out of the property before then.

Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of the property.

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.

Sarah O'Neill

Legal Member/Chair

16/11/20

Date