



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

Chamber Ref: FTS/HPC/EV/19/3860

Re: Property at 7 Springfield Terrace Flat TFR, Dunblane, Stirling, FK15 9AA (“the Property”)

Parties:

Mr Peter Aslet, Mrs Linda Aslet, 104 Ravelston Dykes, Edinburgh, EH12 6HB (“the Applicant”)

Mr Christopher Alexander, 7 Springfield Terrace Flat TFR, Dunblane, Stirling, FK15 9AA (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 28 November 2019 the Applicant’s representatives Grant Property, Edinburgh applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave, Rent statement and Section 11 Notice in support of the application.

2. By Notice of Acceptance dated 18 December a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

13. The Notice to Leave was served personally on him by depositing at his home address by the applicant's representative Mr Rory Foote in accordance with the terms of the tenancy agreement.

14. The Notice to Leave gave the Respondent exactly 28 days' notice of the earliest date the Applicant could make an application to the Tribunal for his eviction.

15. The Applicant gave intimation to the local authority of these proceedings by virtue of a Section 11 Notice sent by recorded delivery post on 28 November 2019.

16. As at the date of the Case Management Discussion the Respondent had accrued rent arrears of £3130.00.

Reasons for decision

17. The Tribunal was satisfied from the oral submissions of the applicant's representatives and from the documents produced that the parties entered into a Private residential tenancy Agreement that commenced on 20 May 2019 at a rent of £590.00 per calendar month.

18. The Tribunal was satisfied that the Notice to Leave was delivered personally by the applicant's representative Mr Rory Foote to the Respondent on 28 October 2019 or if it was not and there was any error in the date of the Notice to Leave it did not make the document invalid all as provided for in terms of Section 73 of the 2016 Act. In reaching its decision the tribunal took account of the fact that the Respondent had not sought to challenge the validity of the Notice, it had been deposited at his home on 24 October and the 28 day period had run from that date and in any event the application to the tribunal had not been made until after the earliest date stated on the Notice to Leave.

19. The Tribunal was satisfied from the evidence produced that proper notice of the proceedings had been given to the local authority.

20. The Tribunal was satisfied from the evidence produced that as at the date of the Case Management Discussion the rent outstanding amounted to more than the equivalent of one month's rent and therefore the statutory ground for granting a mandatory eviction had been met.

Decision

21. The Tribunal having considered the written submissions and the oral evidence of the Applicant's representatives finds the applicant entitled to an order for the eviction of the Respondent from 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

3. Intimation of the Case Management discussion was given to the Applicant's representatives by post on 27 December 2019 and to the Respondent by Sheriff Officers on 30 December 2019.

4. No written submissions were made by either party in advance of the Case Management discussion.

The Case Management Discussion

5. A Case Management discussion was held at Wallace House, Stirling on 29 January 2020. It was attended by Mr Rory Foote and Ms Diane Simpson on behalf of the Applicant. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the Case Management discussion having been given to the Respondent determined to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

6. Ms Simpson confirmed the parties had entered into a Private residential Tenancy agreement. The tenancy commenced on 20 May 2019 at a rent of £590.00 per month. Ms Simpson referred the Tribunal to the agreement and the rent statement submitted with the application.

7. Ms Simpson explained that as the Respondent had accrued rent arrears over three consecutive months a Notice to Leave had been prepared and delivered to the Respondent on 24 October 2019. Mr Foote confirmed he had personally delivered the document to the Respondent by depositing it at the property on 24 October 2019. The Respondent was not present at the time.

8. Mr Foote acknowledged he was aware that in the absence of proof of personal service on the respondent the 2016 Act provided for a further two days for delivery. He submitted in this case that if there was an error in the earliest date on which an application could be made to the Tribunal it was a minor one that could be overlooked by virtue of section 73 of the 2016 Act especially as the application to the tribunal had not been made until 28 November 2019. The prejudice to the applicant was substantially greater than any prejudice to the Respondent.

9. Ms Simpson confirmed that a Section 11 Notice had been sent to the local authority and referred the Tribunal to the documentation submitted with the application.

10. Ms Simpson submitted the statutory requirement of Ground 12 of Schedule 3 of the 2016 Act had been met and asked the Tribunal to grant the order sought.

Findings in Fact

11. the parties entered into a Private Residential tenancy Agreement that commenced on 20 May 2019 at a rent of £590 per calendar month.

12. the Respondent had accrued rent arrears over three consecutive months at the time a Notice to Leave was served on him on 24 October 2020.

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.

Graham Harding
Legal Member/Chair

29 January 2020
Date