



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/3210

**Re: Property at 66 Broomfield Road, Glasgow, G21 3UB
 (“the Property”)**

Parties:

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL
 (“the Applicant”)**

**Ms Sandra Kennedy, 66 Broomfield Road, Glasgow, G21 3UB
 (“the Respondent”)**

**Govan Law Centre, Unit 4 and 6, Orkney Street Enterprise Centre, 18-20
 Orkney Street, Glasgow, G51 2BZ
 (“the Respondent’s Representative”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 26 November 2018 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
- 1.3. The Applicant lodged with the Application:
 - 1.3.1. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 25 March 2018;
 - 1.3.2. A rent statement for the period 23 March 2018 to 3 October 2018; and a rent statement 23 March 2018 to 1 November 2018;
 - 1.3.3. a copy of the Notice to Leave to the Respondent dated 17 October 2018, with proof of service on 19 October 2018;
 - 1.3.4. Section 11 notice sent to the local authority.
- 1.4. On 18 December 2018 further information was requested from the Applicant in relation to (1) the title of the Applicant to the Property and (2) an entry on the rent statement for 23 March 2018.
- 1.5. On 21 December the Applicant sent a letter with the requested information and copy lease Loretto Housing Association Limited to Lowther Homes Limited. Information was also provided in relation to the "Automatic debit adjustment of £128.71 which was said to represent the rent for the period 23 March 2018 to 31 March 2018 as narrated in the second sentence in Clause 8 of the tenancy agreement. (The rent is calculated on an annual basis and divided. Rent £435 x 12/365 = Daily rate of £14.30 x 9 days = £128.71).
- 1.6. The Application was accepted for determination by a tribunal on 1 January 2019. Both parties were notified by letters dated 4 January 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to

take place at 1400h on 26 February 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Respondent was invited to make written representations in response to the Application by 20 February 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

- 1.7. On 22 February 2019, Laura Simpson, Solicitor from the Respondent's Representative contacted the tribunal to advise that she had been instructed to act on behalf of the Respondent and had notified the Applicant.
- 1.8. The Respondent and/or her Representative did not submit any representations or make any further contact with the tribunal until 26 February 2019. On 26 February 2019, the Respondent's Representative contacted the tribunal to note that the order for eviction is sought on a mandatory ground and to state that the respondent does not dispute the arrears. The agent further advised that the Respondent is in hospital today and there will be no appearance on her behalf at the hearing. The Respondent is aware that Orders will likely be granted today in her absence and feels that there is no basis for her to dispute this. The agent requested an update on the outcome of the CMDs.

2. CMD: 26 February 2019 at 1400h, Glasgow Tribunals Centre, 20 York Street, Glasgow, Room 110

- 2.1. Mr David Adams, Solicitor, attended the CMD on behalf of the Applicant.
- 2.2. The Respondent did not attend the CMD, nor did the Respondent's Representative, for the reasons given by the Representative in her email of 26 February 2019, as noted above.
- 2.3. The tribunal, being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with, proceeded with the Application upon the representations of the party present and all the material before it, including the Respondent's Representative's email of 26 February 2019, in terms of Rule 29 of the 2017 Rules.
- 2.4. In relation to the two rent statements which had been produced, Mr Adams confirmed that the document numbered 3/4, the rent statement to 3 October

2018, was attached to the Notice to Leave and had been submitted with the Application paperwork as a single document.

2.5. Mr Adams also confirmed that the figure of £128.71 shown on 23 March 2018 is part of a month's rent.

2.6. Mr Adams lodged a further updated rent statement to 19 February 2019 with the consent of the tribunal. He advised the tribunal that the same had been sent to the Respondent's Representative yesterday, 25 February 2019. It shows the total outstanding arrears as at 19 February 2019 as £1980.75. The monthly rent is £435.00. Three payments of £368.24 Housing Benefit have been paid on 4 January 2019, 18 January 2019 and 19 February 2019 but the account has remained in arrears for 3 months or more and is in arrears equal to an amount greater than one month's rent.

2.7. There have been no submissions or evidence by or on behalf of the Respondent to the effect that the arrears are wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

2.8. The Respondent's Representative has stated on the Respondent's behalf in the written representations of 26 February 2019 that she does not dispute the arrears and that she understands that eviction is sought on a mandatory ground and has no basis to dispute this.

3. The tribunal makes the following findings-in-fact:

3.1. The Proprietor of the Property is Loretto Housing Association Limited incorporated under the Co-operative and Community Benefit Societies Act 2014 (with registered number 1920R(S) and being a Scottish Registered Charity having its registered office at Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL.

3.2. The Applicant has title to the make the Application for eviction in terms of a lease between Loretto Housing Association Limited and Lowther Homes Limited dated 27 July 2018, for subjects including the Property.

3.3. There is a Private Residential Tenancy between the Applicant and the Respondents for the Property dated 23 March 2018

3.4. The start date for the tenancy was 23 March 2018.

- 3.5. The rent payable is £435.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month.
- 3.6. The rent has remained at £435.00 per calendar month from 23 March 2018 to 26 February 2019.
- 3.7. As at 26 February 2019 the Respondent is in arrears of rent of £1980.75, which is greater than one months' rent under the tenancy.
- 3.8. As at 26 February 2019, the Respondent has been in arrears of rent for a continuous period up to and including 26 February 2019, of three or more consecutive months.
- 3.9. The Notice to Leave which was served on the Respondent includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.
- 3.10. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.

4. Findings in fact and law

- 4.1. Because the tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 Act have been established, the tribunal must find that the Ground named in para 12(1) of Schedule 3 of the 2016 Act applies, namely that the Respondent has been in rent arrears for three or more consecutive months.

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.

Suzanne Tanner

26 February 2019

Susanne L. M. Tanner Q.C.
Legal Member/Chair