



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/19/2566

Re: Property at 41C Hill Street, Arbroath, DD11 1AG (“the Property”)

Parties:

Mrs Dawn McGlashan, 22 Isla Avenue, Carnoustie, DD7 6GL (“the Applicant”)

Mr Connor Charles David Mack, Ms Tegan Lee Buick, 41C Hill Street, Arbroath, DD11 1AG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondents

- 1 By application dated 15 August 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondents under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Notice to Leave served upon both Respondents dated 2 July 2019 stating that proceedings for possession will commence no earlier than 1st August 2019 and citing ground 12 together with proof of delivery by email;
 - (ii) Private Residential Tenancy Agreement between the parties dated 29th June 2018;
 - (iii) Rent Statement;
 - (iv) Correspondence between the parties regarding rent arrears; and

(v) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council.

2 By Notice of Acceptance of Application dated 20th September 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 12th November 2019.

3 On 10th October 2019 the Respondents were served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

4 On 11th November 2019, Ms Tegan Buick emailed the Tribunal to advise that she had not been residing in the property since February 2019 and was not objecting to the eviction order. She was of the belief that Mr Mack had advised the Applicant's Agent of her departure but that did not appear to be the case.

Case Management Discussion

5 The Case Management Discussion took place at Elgin Library on 12th November 2019. The Applicant was represented by Melissa Coleman from Struan Baptie Property Management Ltd as the Applicant's Agent. The Legal Member was satisfied that the Respondents had received proper notification of the date, time and location of the Case Management Discussion and therefore determined to proceed in their absence. The Tribunal noted that Ms Buick was aware of the proceedings and had intimated that she was not opposing the application.

6 Ms Coleman advised that the last payment of rent was made on 1st March 2019. It therefore appeared that the cessation of rent payments had coincided with Ms Buick leaving the property going by the terms of her email to the Tribunal. Mr Mack had been in touch in August 2019 and has asked for a copy of his tenancy agreement and had indicated that he would make payment however nothing had been received and there had been no further contact from him. The Applicant therefore sought the order for eviction.

Findings in Fact

7 The parties entered into a Tenancy Agreement dated 29 June 2018 in respect of the Property. The tenancy is a private residential tenancy as defined by the Private Housing (Tenancies) (Scotland) Act 2016.

8 The rent due under the terms of the Tenancy Agreement was £375 per month;

- 9 A Notice to Leave under section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 was delivered to the Respondents by email on 5th August 2019. The Notice states ground 12 as the ground upon which the landlord seeks repossession.
- 10 The rent account has been in arrears since 1 April 2019.
- 11 As at the date of service of the Notice to Leave, arrears in the sum of £1500 were outstanding.
- 12 The arrears as at the date of the Case Management Discussion amount to £3000;
- 13 The rent account has been in arrears for three or more consecutive months;
- 14 The rent arrears are not a result of any delay or failure in the payment of housing benefit.

Reasons for Decision

- 15 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondents by Sheriff Officers. They had not taken the opportunity to make written representations, nor had they attended the Case Management Discussion.
- 16 The Tribunal noted that the Applicant sought recovery of possession under ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon both Respondents under section 62 of that Act confirming the Applicant was seeking repossession on that ground.
- 17 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. The Tribunal must grant the order for repossession where:-
 - (i) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater one month's rent under the tenancy on that day, and 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
 - (ii) 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.

- 18 In the absence of any evidence to the contrary, the Tribunal accepted the submissions made by Ms Coleman on behalf of the Applicant at the Case Management Discussion having taken them into account along with the application paperwork. The Tribunal found the position put forward on behalf of the Applicant to be credible.
- 19 The Tribunal was therefore satisfied based on its findings in fact that arrears of rent in the sum of £3000 were outstanding as at the date of the Case Management Discussion and that the rent payable under the terms of the tenancy was £375 per month. The Tribunal further accepted that the account had been in arrears since April 2019, having regard to the rent statement produced by the Applicant's Agent, and therefore the rent account had been in arrears for more than three consecutive months. There was nothing before the Tribunal to evidence that the arrears were due to any delay or failure in payment of a relevant benefit.
- 20 Finally the Tribunal noted that Ms Buick appeared to have vacated the property in February 2019, however on the basis that she had not formally terminated her interest in the tenancy the Tribunal determined that the order should be made against both Respondents.
- 20 The Tribunal therefore found ground 12 to be met and determined to make an order for repossession of the property 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.


Legal Member/Chair

12/11/19
Date