



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/20/1104

Re: Property at Flat 2, 8 Tower Street, Cumnock, KA18 1AY (“the Property”)

Parties:

Mr David Litman, 20 Craigens Road, Cumnock, KA18 3AS (“the Applicant”)

Mr Nathan Gibson, Flat 2, 8 Tower Street, Cumnock, KA18 1AY (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

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

Background

On 14th April 2020 the Applicant submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.

The Applicant and Respondent are parties to a Private Residential Tenancy Agreement in respect of the Property. The tenancy commenced on 24th September 2019 and the monthly rental due is £303. The Respondent continues to occupy the Property and the Tribunal are also considering an application for eviction.

The date of the case management discussion was intimated to the Respondents who made no written representations.

A case management discussion was held on 11th August 2020. It was held by audio conferencing because of the current public health emergency.

The Case Management Discussion

The Applicant was present. There was no appearance by the Respondent and the commencement of the case management discussion was delayed until 2.10 pm. The purpose of a case management discussion was addressed by the Legal Member. The Applicant said that he had lodged all the evidence he had and he had lodged an up to date rent statement which showed the current level of rent arrears to be £3,268 and for arrears to be in existence since September 2019. The Applicant said that he was seeking an order of eviction on the basis of the Respondent being in rent arrears for three or more consecutive months and being more than one month in arrears as at the date of the case management discussion.

The Applicant said that he knew of no information to suggest that the non payment of rent was due to any issues which the Respondent had with non payment or delay in payment of benefits.

The Applicant invited the Tribunal to determine the application without a Hearing and to grant the order of eviction.

Documents before the Tribunal

1. The Application Form E dated 14th April 2020.
2. Copy Private Residential Tenancy Agreement in respect of the Property.
3. Rent Statement showing current arrears of £3,268.
4. Copy Notice to Leave dated 6th March 2020.
5. Sheriff Officer's Certificate of Execution of Service of Notice to Leave dated 13th March 2020
6. Copy Notice in terms of Homelessness etc (Scotland) Act 2003
7. Sheriff Officer's Certificate of Intimation of the case management discussion dated 13th July 2020.

Findings in Fact

1. The Applicant and the Respondent are parties to a private residential tenancy in respect of the Property.
2. The Respondent is in arrears of rent of £3,268.70 and has been in arrears for more than three consecutive months.
3. The Respondent is in arrears of a sum in excess of one month's rent as at today's date.
4. There is no evidence that non payment of rent is as a result of any issues of non payment or delay of payment of benefits to the Respondent.
5. Appropriate notice has been given to the local authority in respect of the Applicant's obligations under the Homelessness etc (Scotland) Act 2003.

Reasons for Decision

The Law

The Private Housing (Tenancies) (Scotland) Act 2016

Section 51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

Ground 12, Part 3, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016

Rent arrears

- 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.*
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) for three or more consecutive months the tenant has been in arrears of rent, and*

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Tribunal was satisfied that the requirements of Ground 12 are met. It accepted what the Applicant said about the level of rent arrears and that the rent statement lodged by him shows that the respondent has been in rent arrears from September 2019 and August 2020. The rent statement also evidenced that the Respondent is more than one month in arrears of rent as at today's date. The Tribunal saw no purpose in the application being continued to a Hearing. It was also satisfied that the Respondent had had intimation of the case management discussion because it had a copy of the Sheriff Officer's Certificate of Intimation dated 13th July 2020.

The Tribunal had no evidence before it to indicate that non payment of rent was due to the Respondent experiencing difficulties with payment of relevant benefits.

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.

Martin McAllister

**Martin J. McAllister, Legal Member
11th August 2020**