



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/22/1583

Re: Property at 93 Woodburn Road, Dalkeith, EH22 2BQ (“the Property”)

Parties:

Robert P Slight & Sons Limited, Unit B Wallyford Industrial Estate, Wallyford, EH21 8QJ (“the Applicant”)

Mr Scott Ramsay and Miss Michelle McGivern, both 93 Woodburn Road, Dalkeith, EH22 2BQ (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and issued an Eviction Order against the Respondents.

Background

By application, received by the Tribunal on 25 May 2022, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the tenant has been in arrears for three or more consecutive months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 10 October 2020 at a rent of £975 per month, a Notice to Leave, dated 20 April 2022, citing Ground 12 as the Ground on which the Applicant intended to rely and advising that an application to the Tribunal would not be made before 20 May 2022, and a Rent Statement showing arrears as at 26 January 2022 of £4,598.

On 23 July 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 13 August 2022. The Respondents did not make any written

representations to the Tribunal. On 11 August 2022, the Applicant's agents provided the Tribunal with an updated Rent Statement showing arrears as at 10 August 2022 of £8,498, with no rent having been paid since January 2022.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 23 August 2022. The Applicant was represented by Ms Jacqui Ridley of Blacklocks solicitors, Edinburgh. The Respondents were not present or represented. Ms Ridley told the Tribunal that no rent at all had been paid since January 2022. The Respondent, Mr Ramsay, had telephoned her to say that he had been in contact with the local authority regarding being re-housed, but had been told that if the Respondents vacated the Property without an Order from the Tribunal they would be regarded as having voluntarily made themselves homeless. Ms Ridley advised the Tribunal that the Applicant had been in regular contact with the Respondents to discuss the arrears. She understood that the Respondent, Mr Ramsay, was employed in the hospitality industry but had no knowledge as to whether the Respondents were in receipt of Benefits. She submitted that it would be reasonable to issue an Eviction Order.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

Section 51 of the Act states that the Tribunal is to issue an Eviction Order against the tenant in a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months and that the Tribunal must find that Ground 12 applies if, 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 than the amount which would be payable as one month's rent under the tenancy on that day, 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, the Tribunal is satisfied that the tenant's being in arrears over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order.

The Tribunal was satisfied that the rent arrears were in excess of one month's rent and that the rent had been in arrears for more than three months. There was no evidence to indicate that the arrears were in any way attributable to the delay or failure in payment of a relevant benefit. Accordingly, the only matter for the Tribunal to consider was whether it was reasonable to issue an Eviction Order. The Respondents had not been present or represented at the Case Management Discussion and had not provided the Tribunal with any information regarding their personal or financial situation and it appeared that the Respondents were of the view that they required an Eviction Order to be made against them before they could progress their application to be rehoused by the local authority. The rent was now

more than nine months in arrears and no rent at all had been paid since January 2022. It appeared that at least one of the Respondents was in employment. Having considered all the facts and circumstances of which it had been made aware, and all the evidence before it, the Tribunal decided that it was fair to issue an Eviction Order.

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.

George Clark

Legal Member/Chair

Date: 23/08/2022