



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/23/0227

Property : 28 Auchenhove Crescent, Kilbirnie KA25 7HA (“Property”)

Parties:

Donie Jr Jimenez and Portia Jimenez, 31 Stevens Avenue, Birmingham B32 3SB (“Applicant”)

The Property Box (Scotland) Ltd, 66 Kyle Street, Ayr KA7 1RZ (“Applicant’s Representative”)

Gavin Mullen and Vikki McGuire, 28 Auchenhove Crescent, Kilbirnie KA25 7HA (“Respondent”)

CHAP, Michael Lynch Centre for Enterprise, 71 Princes Street, Ardrossan KA22 8DG (“Respondent’s Representative”)

Tribunal Members:

**Joan Devine (Legal Member)
Gerrard Darroch (Ordinary Member)**

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 12 October 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 17 December 2022 ("Notice to Leave"); copy email dated 17 December 2022 attaching the Notice to Leave; rent statement as at 19 January 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email

dated 19 January 2023 and communications to the Respondent regarding arrears dated 21 October, 27 October and 8 December 2022. The Tribunal had sight of a sheriff officer's execution of service certifying service of the Application on the Respondent on 26 April 2023.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 1 June 2023 by teleconference. Alison Caddis of the Applicant's Representative was in attendance as was Alister Meek of the Respondent's Representative. Ms Caddis told the Tribunal that the rent arrears were now £2785. She said that the Applicant had received 4 payments this year from Universal credit of £425. The balance between that payment and the monthly rent was not being paid. She said that the Respondent lived in the Property with their two daughters aged 11 and 9. Mr Meek said that the Application was not opposed. He said that the Respondent had been in touch with the Local Authority regarding alternative accommodation. Nothing had been identified as yet but he said that the Local Authority would not offer anything until the eviction process progressed.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 21 October 2021 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 17 December 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 19 January 2023.
4. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.

Reasons for the Decision

The Tribunal noted that the Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 17 January 2022. The reference to 2022 was clearly a typing error and should have been 2023. The Tribunal was of the view that the error did not affect the effect of the Notice to Leave. In those circumstances the Tribunal determined that the Notice to Leave was valid.

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act. In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. In the absence of any submission opposition by the Respondent that it would not be reasonable to grant an order for eviction, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of 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 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.

Joan Devine

**Joan Devine
Legal Member**

Date : 1 June 2023