

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/2603

Re: Property at 1/1 4 Park Avenue, Dundee, DD4 6PW (“the Property”)

Parties:

Area Estates Limited, Hamways House, 104 Station Road East, Oxted, RH8 0QB (“the Applicant”)

Mr Fraser Torrance, 1/1 4 Park Avenue, Dundee, DD4 6PW (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This was a case management discussion in respect of an application by the Applicant dated 31st July 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application: -
 - A copy of the Tenancy Agreement with a commencement date of 15th February 2021
 - Copy Notice to Leave dated 13th June 2023
 - Proof of service of notice to leave by email to the Respondent dated 13th June 2023
 - Copy S 11 Notice and email to Dundee City Council dated 31st July 2023
 - Letters to tenant regarding non-payment of rent dated 9th June 2023 and 2023
 - Rent statement showing sum due to 1st July 2023 of £9,243.50

The CMD

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Mr Paul Letley. In addition to the clerk another clerk, Ms Fiona Campbell, Ms Higgins was attending as an observer only.
4. The Applicant was seeking eviction on Ground 12 A of Schedule 3 to the 2016 Act
5. The Respondent did not attend nor was he represented on the teleconference. The Tribunal had instructed sheriff officers to serve the application and papers on the Respondent, but the Sheriff Officers advised by letter dated 5th November 2023 that they could not obtain an answer at the property when they attempted service on 27th October 2023 and could not verify the tenant was in occupation. They did however leave their card at the address for the Respondent to contact them, but he has not done so. Service was then effected by service by advertisement on the Tribunal's website from 26th January 2024 to 12th March 2024. The Tribunal was satisfied that service has been appropriately made on the Respondent.
6. Mr Letley spoke on behalf of the Applicant and advised that they were seeking an order for eviction of Mr Torrance who was the tenant in the Property. He explained that the Respondent has been the tenant in the 'Property since February 2021 and has not paid rent which is £450 per month for several years. He confirmed the rent now due is £12,843.50 and at the time the application was raised the rent then due according to the rent statement was £9243.50.
7. Mr Letley advised that the Respondent has been difficult to contact and there had been no response to the Applicants letters or phone calls for many months. They have had difficulty getting access to the property for tradesmen and he believed the last access gained was sometime last year. He confirmed however that he does believe the tenant is still living in the property as neighbours have reported this to be the case and the Applicant has other properties that they lease in this block. He confirmed that the arrears are continuing to accrue and are substantial with no payments made at all by the tenant despite Mr Letley believing the tenant may be receiving housing benefit. Mr Letley believes the tenant is a single male in his 40s.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 15th February 2021.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 13th June 2023 was served on the Respondent by email confirming that no proceedings would be raised before 14th July 2023.
4. These proceedings were raised on 31st July 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on Dundee City Council
6. There were at least 6 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due is £450 in terms of the lease.

8. The current rent contractually due and not paid as at 1st July 2023 is £8793.50.
9. The current rent outstanding is £12,843.50.
10. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 A of Schedule 3 of the Act as the relevant grounds of eviction.
 - The Notice to Leave was also accompanied by evidence of how the ground was met namely a rent statement.
 - Grounds 12 A require 28 days' notice under the current rules. The Notice sets out the notice period as expiring on 14th July 2023 and was served by e mail on 13th June 2023. This Application is therefore timeous.
 - The Tribunal considered whether the terms of Ground 12 A were met namely that the tenant has substantial rent arrears. This ground may be met if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as six months' rent under the tenancy on the day the Notice to Leave was served and the Tribunal finds it reasonable that an order for eviction be granted. The rent statement shows that as of 13th June 2023 the sum due was £8793.50 and no rent had been paid since 12th January 2022. The Tribunal notes the Respondent was in arrears of rent to the extent of at least 6 months' rent when the Notice to Leave was served on 13th June and nothing has been paid since then and so there have been continuous arrears since the Notice to Leave was served and the sum due and not paid today is £12843.50 which is more than 6 months' rent. The Tribunal accepted that Ground 12 A has been met.
 - The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Mr Letley to be honest in his response to questions and accepted that the Respondent has been difficult to contact, has not paid any rent or entered into any discussion about payment and is in substantial arrears. Mr Letley advised that the Respondent had previously indicated that he would not move until forced to and the Applicant has sent regular reminders about the rent and has advised the Respondent of this action. The Respondent has made no effort to pay rent or the arrears, he has stopped paying any rent for over 24 months and has not been in communication with the Applicant. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.
 - There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 A being an eviction ground specified in the application and in the Notice to Leave is met, and that it is reasonable for the Tribunal to grant the application.
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- Decision

An order for possession is granted.

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.

A large black rectangular box redacting the signature of the Legal Member/Chair.

Legal Member/Chair

12 March 2024

Date