

**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/19/1490**

**Property : 224 Montrose Street, Clydebank G81 2PQ ("Property")**

**Parties:**

**Stuart Gordon, 75 Victoria Street, Rothesay, Isle of Bute PA20 OAP ("Applicant")**

**Elizabeth Taylor, 224 Montrose Street, Clydebank G81 2PQ ("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: unsigned Private Residential Tenancy Agreement; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 9 April 2019 ("Notice to Leave"); copy email from the Applicant to the Respondent attaching Notice to Leave dated 10 April 2019; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003; copy email to the Local Authority attaching the notice dated 2 June 2019; statement of rent arrears and sheriff officer's execution of service certifying service of the Application on 5 July 2019.

**Case Management Discussion**

A case management discussion took place before the Tribunal on 7 August 2019 at the Glasgow Tribunals Centre. The Applicant was in attendance and was accompanied by a supporter, John Devine. There was no appearance on behalf of the Respondent. The Applicant produced to the Tribunal a rental statement at the case management discussion which showed that the rent arrears totalled £3455

which was greater than one month's rent, and that the rent had been in arrears for a continuous period of more than three consecutive months. The rental statement showed that one payment of £100 had been paid towards the rent since the tenancy commenced on 1 December 2018. The Applicant also produced to the Tribunal a copy of an email to the Local Authority dated 2 June 2019 attaching the Section 11 notification.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 1 December 2018 ("Tenancy Agreement").
2. In terms of clause 7 of the Tenancy Agreement the Respondent agreed to pay rent at the rate of £395 per month payable on the 28th of each month.
3. Rent of £3455 was outstanding for the period 28 November 2018 to 28 July 2019.
4. The Notice to Leave was issued by email on 9 April 2019. It stated that an application for an eviction order would not be submitted to the Tribunal before 8 May 2019. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
6. Notice of the date of the case management discussion had been given to the Respondent on 5 July 2019

### **Reasons for the Decision**

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 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.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 8 and then narrated that in excess of 5 months' rent was in arrears. In part 2 of the Notice to Leave the Applicant had stated that the Respondent was in rent arrears over three consecutive months. In part 3 of

the Notice to Leave the Applicant had referred to Ground 8 and then narrated that 5 months' rent was overdue. The reference to Ground 8 in the Notice to Leave was erroneous. The reference should have been to Ground 12 of schedule 3 of the Act. Ground 12 states:

"(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."

The Tribunal considered whether the erroneous reference to ground 8 resulted in an invalidity of the Notice to Leave and determined that it did not.

In terms of Section 50(1) of the Act a tenancy which is a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord. In terms of Section 51 of the Act the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on application by the landlord, it finds one of the eviction grounds named in schedule 3 applies. In terms of Section 52(2) of the Act the Tribunal is not to entertain an application for an eviction order if it is made in breach of sub-section (3) in terms of which an application for an eviction order against a tenant must be accompanied by a copy of the notice to leave which has been given to the tenant.

In terms of Section 52(5) of the Act the Tribunal may not consider whether an eviction ground applies unless it is a ground which (a) is stated in the notice to leave accompanying the landlord's application in accordance with sub-section (3) or (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

In this case the Respondent had received a notice to leave in terms of Section 50(1) of the Act. In terms of section 51 of the Act, the Tribunal determined that an eviction ground named in Schedule 3 applied, namely the Respondent was 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 had been in arrears of rent for a continuous period of 3 or more consecutive months. The Application was accompanied by a copy of the Notice to Leave which had been given to the Tenant as required by section 52(3) of the Act.

The issue was whether there had been compliance with section 52(5). The eviction ground had been specified in Part 2 of the Notice to Leave and further clarification of the eviction ground was given in Part 3 of the Notice to Leave. The Applicant told the Tribunal that the reference to ground 8 was an error. The Tribunal was of the view that the erroneous reference to ground 8 was not sufficient to invalidate the Notice to Leave. The reasonable recipient of the notice would have understood the basis on which eviction was being sought.

### **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  
Legal Member

7 August 2019  
Date