

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/19/1843

Re: Property at 15E Balmedie Drive, Dundee, DD4 8PG (“the Property”)

Parties:

Mr Wojciech Kalemba, Ms Mirela Kawalec, 15 Arthur Street, Blairgowrie, PH10 6PB (“the Applicant”)

Ms Jacqueline Morgan, 15E Balmedie Drive, Dundee, DD4 8PG (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

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

Background

By application, received by the Tribunal on 13 June 2019, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 11 and 12 of Schedule 3 to the 2016 Act.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 1 March 2018 at a rent of £450 per month, a Notice to Leave dated 4 April 2019, and a Rent Statement stating that the rent arrears as at 3 June 2019 were £2,100, the last payment having been made on 17 February 2019..

On 10 July 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 28 July 2019. The Respondent did not make any written representations to the Tribunal. On 25 July 2019, the Applicant’s representative

provided to the Tribunal an updated Rent Statement showing arrears as at 1 August 2019 of £3,000.

Case Management Discussion

A Case Management Discussion was held at Caledonian House, Greenmarket, Dundee, on the afternoon of 20 August 2019. The Applicant was represented by Mr Stephen Forsyth of Muir Myles Laverty solicitors, Dundee. The Respondent was not present or represented.

The Applicant's representative confirmed that no payments of rent had been made since the date of the application and asked the Tribunal to issue an Eviction Order without a hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") 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 and that it would determine the application without a hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant in a Private Residential Tenancy if, on 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 2016 Act states that it is an Eviction Ground that the tenant has been in rent 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 one month's rent and 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 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.

The Tribunal was satisfied from the evidence before it that the arrears presently exceeded one month's rent and that the rent had been continuously in arrears since February 2019. There was no evidence to suggest that the arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 had been met and the Tribunal was bound to make an Eviction Order.

As Ground 12 had been established, it was not necessary for the Tribunal to consider the application under Ground 11.

Decision

The Tribunal determined that the application should be determined without a hearing and issued an Eviction Order against the Respondent.

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

