



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2124

Re: Property at 430 North Anderson Drive, Aberdeen, AB16 7GL (“the Property”)

Parties:

Mr Alan McKinnon and Ms Sinead McKinnon, 9 Colinslie Road, Glasgow, G53 5HU (“the Applicant”)

Ms Nicola Thomas, 430 North Anderson Drive, Aberdeen, AB16 7GL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

- 1 By application dated 8th July 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Tenancy Agreement between the parties dated 5th October 2018;
 - (ii) Notice to Leave dated 31st May 2019 citing grounds 11 and 12 and confirming that proceedings would be raised no earlier than 1st July 2019;
 - (iii) Copy Letter from Scottish Gas to the Applicants;

- (iv) Notice to Aberdeen City Council under section 11 of the Homelessness (Scotland) Act 2003; and
- (v) Letter from Stewart Property Services to the Applicants confirming outstanding rent arrears of £1842.39 as at 8th July 2019.

In response to a request from the Tribunal the Applicants subsequently confirmed that the Notice to Leave had been served upon the Respondent by hand delivery and recorded delivery mail.

- 2 By Notice of Acceptance of Application dated 9 August 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 20th August 2019.
- 3 On 19th August 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.
- 4 On 9th September 2019 the Applicants provided a further letter from Stewart Property Services dated 6th September 2019 confirming that arrears in the sum of £2832.39 as at that date.

Case Management Discussion

- 5 The Case Management Discussion took place at Aberdeen Sheriff Court on 24th September 2019. The First Named Applicant Mr McKinnon was present. He was accompanied by Anna Munro from Stewart Property Services. The Tribunal was satisfied that the Respondent had received proper notification of the Case Management Discussion and therefore determined to proceed in her absence.
- 6 Mr McKinnon advised that the arrears position has not changed since 9th September. The balance outstanding was £2832.39. Ms Thomas had been referred to them from the Council. Ms Munro had spoken with the Council officer who referred her and they have had no recent contact either. The Applicants therefore sought the order for eviction.

Findings in Fact

- 7 The parties entered into a Tenancy Agreement dated 5th October 2018 in respect of the Property;
- 8 The rent due under the terms of the Tenancy Agreement was £495 per month;

- 9 The arrears as at the date of the Case Management Discussion amount to £2832.39;
- 10 The rent account has been in arrears for three or more consecutive months;
- 11 The rent arrears are not a result of any delay or failure in the payment of housing benefit.

Reasons for Decision

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers. She had not taken the opportunity to make written representations, nor had she attended the Case Management Discussion.
- 13 The Tribunal noted that the Applicant sought recovery of possession under grounds 11 and 12 of Schedule 3 of the 2016 Act.
- 14 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. The Tribunal must grant the order for repossession where:-
 - (i) 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 one month's rent under the tenancy on that day, 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
 - (ii) 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.
- 15 In the absence of any evidence to the contrary, the Tribunal accepted the Applicant's submissions at the Case Management Discussion. The Tribunal found their position to be credible in this regard.
- 16 The Tribunal was satisfied based on its findings in fact that arrears of rent in the sum of £2832.39 were outstanding as at the date of the Case Management Discussion and that the rent payable under the terms of the tenancy was £495 per month. The Tribunal further accepted that the Respondent had paid nothing to the rent account since April 2019, and therefore the rent account had been in arrears for more than three consecutive months. There was nothing before the Tribunal to evidence that

the arrears were due to any delay or failure in payment of a relevant benefit. The Tribunal therefore found ground 12 to be met.

- 17 For the avoidance of doubt, on the basis that ground 12 was a mandatory ground the Tribunal did not require to consider the provisions of ground 11 as it was obliged to grant the order for repossession.
- 18 The Tribunal therefore determined to make an order for repossession 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.

**Ruth O'Hare
Legal Member/Chair**

Date

24/9/19