

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/19/2379

Re: 80 Fairhaven, Kirn, Dunoon, PA23 8NS (“the property”)

Parties:

Mr Paul Antony Morris, 3 Violet Grove, 96 George Street, Dunoon, PA23 8FP (“the applicant”)

Ms Bernadette Cairns, Mr James McCluskey, 80 Fairhaven, Kirn, Dunoon, PA23 8NS (“the respondent”)

Tribunal Member:

Adrian Stalker (Legal Member)

Decision (in absence of the respondents):

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the requirements of section 51 and schedule 3 ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 were met, and accordingly, the Tribunal granted an eviction order.

Background

1. On or about 10 August 2018, the applicant let the property to the respondents, under a private residential tenancy (“PRT”) in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The parties entered into a written agreement, using the Scottish Government’s Model Agreement.
2. By an application received by the Tribunal on 29 July 2019, the applicant sought an eviction order under section 51 of the Act.
3. The sole ground for eviction on which the application founds is rent arrears, under paragraph 12 of schedule 3 to the Act. That is also the sole ground to which the

applicant refers, in the copy notice to leave (under section 62 of the Act) which was produced with the application. The application stated that no rent had been paid since the commencement of the tenancy and that the arrears of rent and service charges stood, respectively, at £5,640 and £220.32.

4. On 16 September 2019, notice of acceptance was granted by a legal member. A Case Management Discussion ("CMD") was fixed.

The CMD

5. The CMD took place at 2pm on 25 October 2019, at Gamble Halls, 44 Shore Road, Gourrock. The applicant did not attend, but he was represented by Mr Lorenzo Ranalli, of Messrs Corrigan Black, his agents. The respondents did not appear, and were not represented. They had not made any representations to the Tribunal, in advance of the CMD.

6. The respondents had been validly served by sheriff officers, on 26 September, with notification of the application, papers and the date of the CMD. I was provided with the executions of service in respect of both respondents.

7. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

8. I was invited by Mr Ranalli to grant the application and make an eviction order. He advised me that a cash payment of £450 was made by the tenants on 10 August 2018, at the beginning of the tenancy. Nothing whatsoever has been paid since then. The arrears currently stand at £6,130.

9. Along with the application, the Tribunal has been provided copies of the private residential tenancy agreement, notice to leave with execution of service, and section 11 notice. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the 2016 Act, and the procedures set out in that Act appeared to have been correctly followed and applied.

10. With the application, the Tribunal had also been provided with a bank statement from the applicant, for the period from November 2018 to March 2019, to which payments of rent would have been credited, had any been made.

Statement of Reasons

11. In terms of section 51 of the Act, the Tribunal is to issue an eviction order against the tenant if, on an application by the landlord, it finds that one of the eviction

grounds named in schedule 3 applies. Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) 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 the amount which would be payable as one month's rent under the tenancy on that day, and (2) 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 (3) 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.

12. I was satisfied that ground 12 had been established. The respondents are in substantial arrears of rent which currently exceed one month's rent, and have been in arrears for a continuous period in excess of three months. I was further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

Decision

13. In these circumstances, the Tribunal will make an eviction order under section 51 of the Act.

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. Strain

Legal Member

25/10/19

Date