

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 (Tenancy) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/18/2482

Re: Property at 1/R, 102 Buttars Loan, Dundee, DD2 4PY ("the Property")

Parties:

Mr Rhys Price, 52 Forres Crescent, Dundee, DD3 0ER ("the Applicant")

Ms Jacqueline Ferrie, Ms Maureen Ferrie, 1/R, 102 Buttars Loan, Dundee, DD2 4PY ("the Respondents")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be granted and an eviction order against the Respondents granted.

Background:

The application for an order under S 51 of the Private Housing (Tenancy) Act 2016 (the Act) was made on 11 September 2018 by the Applicant through his representatives Westport Property Limited. A letter authorising Westport Property Limited to act on behalf of the Applicant, a copy of the Private Residential Tenancy Agreement dated 30 April 2018 for a tenancy commencing on 1 May 2018 between the Applicant and the Respondents, a copy of a Notice to Leave dated 7 August 2018 for a date of 6 September 2018, a S11 Notice, Proof of Service on the Respondents by Sheriff Officers of service of the Notice to Leave on 8 August 2018, a rent statement dated 1 September 2018 and letters from Westport Property to the Respondents setting out the respective rent arrears dated 1 September 2018, 1 August 2018, 18 June 2018, 16 May 2018, 8 May 2018 and 3 May 2018, an undated letter regarding the lack of contact of the Respondents and an email of the agents to the Respondents dated 18 July 2018 were included with the application.

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The application and the date, time and venue for the Case Management Discussion (CMD) on 13 November 2018 were intimated to the Respondents by Sheriff Officers on 24 October 2018. A subsequent address change for the venue was intimated to all parties on 9 November 2018 by email to the email addresses for the parties provided.

The intimation letter advised the Respondents that a decision could be made on the day. It advised the Respondents to make representations but no representations were received.

On the day the Respondents did not attend and were not represented. The Applicant did not attend but was represented by Jane Carmichael and Shona Innes from Westport Property Limited. In terms of Rule 29 of the Rules of Procedure (the rules) the CMD proceeded in the absence of the Respondents:

The Case Management Discussion

The Applicant's representative advised that the week prior to the CMD they received a call from neighbours advising the Respondents may have left the property. They attended to find the property almost empty of furniture and with the door left unlocked. The Applicant secured the premises with a new lock and the next day the Respondents contacted the office of the representatives asking for access to remove some further items. This was arranged and the Respondents and the Applicant attended at the property. The Respondents since indicated that there were further items they wished to remove. No formal consent to leave the property had been forthcoming and Ms Carmichael explained it was still not entirely clear as to whether the Respondents had left the premises for good.

She provided an updated rent arrears calculation showing payments of Housing Benefit being made directly to the Applicant of £169.80 per month in arrears for a rental charge of £400 per month payable in advance. The Respondents had been in arrears of rent since the start of the tenancy on 1 May 2018 and the arrears as of 13 November 2018 are £1,471.61 as shown in the up to date calculation lodged. This is based on rent being payable to date pro rata and not on the basis of a payment of £400 due for the whole of November.

She further explained that the payments were made in relation to a claim for Housing Benefit of Jacqueline Ferrie and that no payments of benefits had been made directly to the Applicant for Maureen Ferrie, although she had been informed by Maureen Ferrie in June that an application for benefits was being made. No further information regarding this had been forthcoming for 4 months.

There had been arrears for over 4 months and at the date of the CMD the arrears exceeded the amount of one months rent. The Applicant was asking for an order to be granted.

No information and no representations had been received from the Respondents.

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Findings in Fact

- 1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement dated 30 April 2018 for a tenancy commencing on 1 May 2018.**
- 2. The rent due was set at £400 per month payable in advance.**
- 3. No payments were received on 1 May 2018 and 1 June 2018. After that date some Housing Benefit payments were received, which did not cover the monthly rent due.**
- 4. The Applicant's Representative Westport Property had sent letters to the Respondents dated 1 September 2018, 1 August 2018, 18 June 2018, 16 May 2018, 8 May 2018 and 3 May 2018 setting out the respective rent arrears**
- 5. The Applicant served a Notice to Leave dated 7 August 2018 for a date of 6 September 2018 on 8 August 2018 on both Respondents through Sheriff Officers.**
- 6. The grounds stated in said Notice to Leave were stated as "You have breached a term(s) of your tenancy agreement" and "You are in rent arrears over three consecutive months".**
- 7. The further explanation given was "failed to pay rent on time each month, failed to pay any rent arrears, failed to discuss payment plan with landlord/agent" and was accompanied by copy rent arrears letters.**
- 8. Housing Benefit payments of £184.60 on 25 June 2018 and £169.80 between 23 July 2018 and 12 November 2018 had been made to the Applicant.**
- 9. On 13 November 2018 the arrears of rent are £1,471.61.**

Reasons for Decision

In terms of paragraph 12 of Schedule 3 of the Act " (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 Respondents have been in arrears from 1 May 2018 to 13 November 2018 and as at 13 November 2018 the arrears of £1,471.61 exceed the amount of monthly rent of £400. Relevant benefits were being paid directly to the Applicant and there is no evidence of any delay or failure of payment of relevant benefits, which would have contributed to the arrears.

The Notice to Leave gave the required 28 days notice period in terms of S 54 (2) of the Act. The S 11 Notice to the Local Authority required by S 56 of the Act had been given to the Local Authority.

The Respondents made no representations and did not attend the CMD. The facts of the case are not in dispute. The Tribunal in these circumstances must grant the order for eviction and has no discretion in the matter. There was no requirement for a hearing as the facts were not in dispute.

The Tribunal was satisfied that the Applicant had complied with the legislative requirements in respect of the application and that Ground 12 of Schedule 3 of the Act applies in this case as a mandatory ground for eviction.

Decision

The Tribunal being satisfied that in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 applies in this case issues an eviction order against the Respondents in terms of S 51 (1) and specifies that the tenancy comes to an end on 13 November 2018 in terms of S 51 (4) of said 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.

Petra Hennig-McFatrige

Legal Member/Chair

17 November 2018

Date