



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/19/2773

Re: Property at 22 Carthage Avenue, Dumfries, DG1 4XN (“the Property”)

Parties:

Mr Donald Walker, 16 Noblehill Avenue, Dumfries, DG1 3HN (“the Applicant”)

Ms Veronica Brown, formerly residing at 22 Carthage Avenue, Dumfries, DG1 4XN, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 4th September 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave, section 11 notice, rent arrears statement and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1st October 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 30th October 2019 at Lochvale House, Georgetown Road, Dumfries. The Applicant appeared, and was not represented. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 5th August 2019 narrated that rent arrears at that time amounted to £1,350.00, accumulated over the three preceding months under the private residential tenancy agreement between the parties.

The Applicant confirmed that the Respondent appears to have quit the premises around 7th October 2019, leaving the keys pushed through the letterbox. The Applicant does not know her current whereabouts. He still wished an order from the Tribunal to ensure that he was acting properly before resuming possession of the Property. Rental of £450.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period in excess of three months. The Tribunal is 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

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

30/10/19

Date