



Decision 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/22/4466

Re: Property at 97A Appin Crescent, Dunfermline, Fife, KY12 7QT (“the Property”)

Parties:

Mr Michael Ryan, 18 Powlees Place, Falkirk, FK2 8FA (“the Applicant”)

Mr Leslie James Bateson, 97A Appin Crescent, Dunfermline, Fife, KY12 7QT (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

Introduction.

This Hearing concerned an Application under application for an Eviction order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in respect to a Private Rented Tenancy. The hearing took place by teleconference.

1. Attendance and Representation.

John Jarvie, Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1 3AG attended on behalf of the Applicant. The Applicant was not in attendance.

The Respondent was not in attendance. He had been served by Sheriff Officer on 9th February 2023. He had also engaged with the Tribunal seeking a

postponement of an earlier Hearing that the Tribunal had granted to today's date. No written representations had been received other than related to the said postponement request.

2. Preliminary Matters.

The Respondent was not present. The Applicant's representative said that on in March 2023 the letting agent had contact with the Respondent but he was not aware of the content of same. The Applicant's representative confirmed that the rent arrears for the property were now £5750 as at 12th May 2023 and the Tribunal noted an up to date rent statement had been lodged by the Applicant and intimated on the Respondent.

There were no other preliminary matters raised.

3. Case Management Discussion

The Applicant's representative confirmed the Applicant sought an eviction order to be granted on the basis of the rent arrears present. This was on the basis of Ground 12 of schedule 3 of the 2016 Act. A Notice to Leave was sent to the Respondent on these grounds on 11th November 2022 and the application thereafter raised. The Applicant's representative said that all the necessary paperwork had been lodged and his submission was that the formal requirements were met. The submission further was that the grounds were still present and the Respondent remained in 3 months consecutive arrears.

The Applicants submission further was that the Respondent had had a considerable amount of notice and that it has been 6 months since the notice without change to the arrears other than that they have increased substantially. The Applicant is being affected by the cost of living and the lack of rental payments causing the applicant to struggle financially. The last payment received to the rent account was on 27th September 2022. There has been a considerable period of time without any payment. The Applicant's representative said that the Applicant had other rental properties but he was not sure of how many but there is an mortgage on the property.

The Applicant's representative said that the Respondent lives alone with contact and visits from his children. The Respondent has suffered from mental illness and this was the reason put forward initially for arrears and there had been no suggestion of benefits.

4. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at the Hearing. He had earlier engaged with the Tribunal and sought a postponement which was granted.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 4th March 2022.**
- 5. A Notice to Leave was sent to the Respondent on 11th November 2022. The Applicant has sent pre action requirement correspondence to the Respondent and a copy of same was lodged dated 19th October 2022.**
- 6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits the Respondent was in arrears of rent by an amount equal to or greater than the amount which would be payable as rent under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.**
- 7. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to £5750. Monthly contractual rent is £575.**
- 8. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.**
- 9. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.**
- 10. Further the Tribunal was satisfied that the rent arrears were now of a substantial nature. No payment to rent had been received since September 2022.**
- 11. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 12. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 13. On the evidence available to the Tribunal the Respondent had no dependents residing with him. The Applicant was continuing to meet a mortgage on the property without any payments to rent. There on balance was no entitlement to benefits known to the Applicant. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**
- 14. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**
- 15. The Tribunal noted the application was subject to the provisions of The Cost of Living (Tenant Protection) (Scotland) Act 2022.**

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.

Karen Kirk

26/05/2023

Legal Member/Chair

Date