

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 Residential (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/19/2032

Re: Property at G/L (5A) Viewfield Place, 5 Crieff Road, Perth, PH1 5AG (“the Property”)

Parties:

Scavach Investments Limited, Balquhandy House, Dunning, PH2 0RB (“the Applicant”)

Mr Charles Mackenzie, G/L (5A) Viewfield Place, 5 Crieff Road, Perth, PH1 5AG (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be granted in favour of the Applicant against the Respondent

Background

The Applicant is the owner of the Property. The Applicant alleged that the Property had been let to the Respondent and that the Respondent had failed to make payment of the rent due under the lease timeously and in full. The Applicant alleged that at the time of making the application there were more than 3 months of rent continuously in arrears and at the date of the CMD there was more than one months rent in arrears.

The Tribunal had before it the following information:-

- A copy of the Applicant’s application to the Tribunal;
- A copy of the lease between the parties dated 2 November 2018;

- A copy of the Applicant's Land Certificate evidencing ownership of the Property;
- A rental arrears statement showing a balance outstanding as at August 2019 of £3,033.21;
- Sheriff Officers Certificate of Service dated 16 July 2019.
- S11 Homelessness Notice to Perth & Kinross Council
- A Notice to Leave dated 15 May 2019

Case Management Discussion ("CMD")

The Tribunal held a CMD at Inveralmond Business Centre, Auld Bond Road, Perth on 22 August 2019 at 2pm. The Applicant was not present but was represented by Jennifer Kent of PKC Lets. The Respondent was neither present nor represented. The Respondent had not made any written submissions to the Tribunal either.

The Tribunal noted copies of all the relevant documents had been served upon the Respondent timeously by Sheriff Officers. The accompanying letter from the Tribunal highlighted the requirement for the Respondent to attend and stated that a decision could be made in his absence. The Tribunal saw no reason not to proceed to make a determination at the CMD.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant is the owner of the Property;
- The Applicant had entered in to a lease of the Property with the Respondent;
- The Respondent had failed to pay any rent at all for the first three months and had paid only sporadically thereafter;
- At the date of the hearing there were arrears of £3,033.21 due by the Respondent to the Applicant;
- The Respondent, at the date of the application to the Tribunal, had been in arrears of rent continuously for more than 3 consecutive months and at the date of the CMD was more than one months rent in arrears.

Reasons for the Decision

The Tribunal noted the terms of the rent arrears statement. This showed that the Respondent had failed to make payment for the first three months and had been sporadic in payment thereafter. The statement showed arrears due under the lease of £3,033.21. The Tribunal had no reason to doubt the veracity of the rent statement and the evidence given by Ms Kent. The Respondent had not given any explanation or evidence to refute the evidence of the Applicant and his agent. The arrears statement reflected the sums chargeable as rent under the lease. Accordingly the Tribunal was satisfied that the test set out in Ground 12 of Schedule 3 to the Act had been met. The Respondent had been in continuous arrears for more than 3 months at the date of application to the Tribunal and was in more than one months arrears at the date of the CMD. This was therefore a mandatory ground for eviction and the

Tribunal had no discretion. Whilst a payment had been made by the Respondent in August, it did not take the sums outstanding below the one month threshold.

The Tribunal had noted that no rent had been paid for the first 3 months and then rent had been paid sporadically. This may have been indicative of issues with payment of Universal Credit or other form of benefit and would give the Tribunal a degree of discretion. Ms Kent was able to advise that the Respondent had engaged with them sporadically on occasion. One of the local authorities support workers had discussed with the Respondent whether he could claim for benefit. The Respondent had apparently advised that he could not and would not apply for benefits and he was now in employment in any event. The Tribunal was satisfied appropriate enquiries had been made and was satisfied there was no ground for discretion here.

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.

E Miller

Legal Member/Chair

22/8/19

Date