



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/18/3529

Re: Property at Flat 1 Castlehill House, 80 Falkirk Road, Larbert, FK5 3AH (“the Property”)

Parties:

Mrs Lesley Doherty, 4 Johnston Place, Denny, FK6 5HD (“the Applicant”)

Mr Adam English, Flat 1 Castlehill House, 80 Falkirk Road, Larbert, FK5 3AH (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

1. Background

- 1.1. The Applicant and Mr Michael Doherty sought an order for eviction in respect of the property on various grounds, including rent arrears and anti-social behaviour. An application in terms of Rule 109 (Eviction Order in a Private Residential Tenancy) was received by the Tribunal on 27th December 2018.
- 1.2. The Applicant and Mr Michael Doherty separately lodged an application in respect of rent arrears and damage to the property.
- 1.3. The Applicant and Mr Michael Doherty lodged inter alia a copy of the lease, the notice to leave, a section 11 notice, a rent statement, and bank statements.

- 1.4. The Tribunal initially fixed a Case Management discussion for 26th April 2019, however intimation upon the Respondent failed. There was a suggestion that the Respondent had moved out of the property, however this could not be confirmed.
- 1.5. The Tribunal then fixed a Case Management Discussion in respect of each case for 17th June 2019 at 1400 hours. The Respondent was served with notice of the hearing by advertisement via the Tribunal website between 30th April 2019 and 17th June 2019. The Respondent was told that he required to attend the Case Management Discussion today, and was informed that the Tribunal could today make any decision on the applications that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

2. The Case Management Discussion

- 2.1. The Applicant and Mr Doherty attended the Case Management Discussion.
- 2.2. The Respondent failed to attend at the Case Management Discussion. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend in the event that he was running late.
- 2.3. The Applicant and Mr Michael Doherty confirmed that the Respondent had not made any recent contact with them. They confirmed that they did not know whether the Respondent was still living within the property, although they suspected that he was spending time elsewhere as complaints by the neighbours had not been made recently. The Applicant and Mr Doherty invited the Tribunal to proceed in the absence of the Respondent, and to grant both orders. The Tribunal was satisfied that appropriate notice had been given to the Respondent, and that it was fair to proceed in his absence.
- 2.4. The Tribunal proceeded on the basis of the written documents which and previously been lodged, together with oral submissions from the Applicant in respect of those documents.
- 2.5. As a preliminary matter, the Applicant confirmed that Mrs Lesley Doherty was the only landlord named in the tenancy agreement, and the applications ought to proceed in her name only. The Tribunal allowed the applications to be so amended.
- 2.6. The Applicant confirmed that no rent payments had been made since 1st September 2018, and that the rent outstanding was £3,850.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a private residential tenancy agreement on or around 28th March 2018.
- 3.2. The rent payable was £425 per calendar month.
- 3.3. The Respondent made rent payments in respect of rent due until September 2018. Until September 2018, the Respondent's payments were frequently paid in various smaller sums, however these amounted to the whole amount of rent due. In September 2018 the Respondent made a rent payment of £400. The Respondent made no further payments in respect of the property.
- 3.4. In or around November 2018, the Respondent told Mr Doherty that he would not be making any further rent payments.
- 3.5. The Respondent did not vacate the property after service of the Notice to Leave in November 2018.
- 3.6. On the date of the Case Management Discussion, the Respondent had not returned the keys for the property to the Applicant.
- 3.7. On the date of the Case Management Discussion, nine months' rent was outstanding.

4. Reasons for Decision

- 4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.
- 4.2. Section 51(1) of the Private Housing (Tenancies) Scotland Act 2016 ("the 2016 Act" provides that, *"The First-tier 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"*.
- 4.3. Schedule 3, paragraph 12(1) and (1) of the 2016 Act provides that:
 - (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 subparagraph (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;*
- (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 payment of a relevant benefit.*

- 4.4. The Tribunal accepts that the Respondent is in rent arrears of more than £425, which represents one month's rent.
- 4.5. The Tribunal accepts that the Respondent has been in rent arrears for a continuous period of more than three consecutive months, namely nine months.
- 4.6. There was no evidence that the rent arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 4.7. Accordingly, the Tribunal was satisfied that the grounds were met, and that the Tribunal was required to grant the order.

5. Decision

- 5.1. The order for eviction is granted.

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.


Legal Member

17/06/19.
Date