



**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/20/1496**

**Re: Property at 84 Wellgate Street, Larkhall, ML9 2AQ (“the Property”)**

**Parties:**

**Mr Steven Cairns, 9 Rosegreen Crescent, Bellshill, ML4 1NT (“the Applicant”)**

**Miss Emma Simpson, Mr William McLeish, 84 Wellgate Street, Larkhall, ML9 2AQ; 84 Wellgate Street, Larkhall, ML9 2AQ (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision (in absence of the Respondents)**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the respondents from the applicant’s property at 84 Wellgate Street Larkhall ML9 2AQ be made in terms of ground 12 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 on the basis that the respondents are in arrears in excess of one month’s rent and have been in arrears for more than three months.**
- 2. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016, ‘the Act’, and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’.**
- 3. The tribunal had before it the following copy documents: -**

**(1) Application dated 10 July 2020 and received by the tribunal on that date.**

- (2) Private Residential Tenancy Agreement 'PRT' between the parties dated 17 August 2018.
- (3) Rent statement with arrears as at 10 July 2020.
- (4) Notice to leave dated 3 February 2020.
- (5) Proof of service of notice to leave dated 4 February 2020.
- (6) S11 notice.
- (7) Execution of service of the application by sheriff officer dated 24 August 2020.
- (8) Land certificate.

4. The applicant attended the CMD which proceeded by conference call due to the Covid-19 pandemic. The tribunal had sight of item 7 above and was satisfied that the respondents had received appropriate notice of CMD in terms of rule 24. The tribunal proceeded in the absence of the respondents in terms of rule 29.

### **Preliminary matters**

5. The tribunal noted that the notice to leave on page 4 made reference to an attached "rent account with payment dates" but there was no rent statement attached to the notice to leave lodged with the application. Mr Cairns stated that he sent all papers to the tribunal and a statement was attached to the notice to leave sent to the respondents. The tribunal also noted that the rent statement lodged with the application did not have the same level of arrears at the date of the notice to leave. The notice to leave referred to arrears of £2205.55 at 3 February 2020 whereas the rent statement lodged with the application gave the arrears on 7 February as £2449.88. Mr Cairns was unable to account for the difference.

### **Discussion**

6. Mr Cairns stated that rent arrears began to accrue for the property a few weeks after the respondents took entry. The rent arrears are substantial and as at 10 July 2020, stood at £4296. Mr Cairns conceded that there was a small difference in the level of arrears given in the notice to leave and in the more up to date rent statement from 10 July 2020. The tribunal noted that the respondents appeared to make payment weekly so the small difference may be due to the timing of payments. Mr Cairns stated that the arrears remain at around £4296. He also stated that since August 2020 the respondents have made a payment of rent each week plus a small amount towards the arrears so the arrears may have gone down slightly. In any event the tribunal noted that as at the date of the notice to leave and at the date of the CMD more than one month's rental payment had been outstanding for more than three months in terms of ground 12 of schedule 2 of the Act.

7. The tribunal required to be satisfied that the arrears of rent were not wholly or mainly in consequence of a delay or failure in a relevant benefit. Mr Cairns stated that the first respondent as far as he is aware, has been in and out of employment during the course of the PRT. The second respondent is in employment. He is not aware of any claim for housing benefit or the like. He is not aware if they would be eligible. It was his position that they have never mentioned to him that they are eligible or have applied for housing benefit or that there is any issue in relation to benefits. Mr Cairns was seeking an order today but advised that if the respondents continue to make regular payment of rent and something towards the arrears it is his intention not to enforce the order meantime.

## **8. Findings in fact**

- (1) The applicant is the owner of the property.
- (2) The parties entered into a PRT for let of the property on 17 August 2018 with an agreed monthly rent of £600.
- (3) Rent arrears began to accrue in September 2018.
- (4) A valid notice to leave dated 3 February 2020 was served on 4 February 2020.
- (5) At the date of the notice to leave there were rent arrears of greater than one month's rental payment.
- (6) As at the date of the notice to leave the rent arrears had been outstanding for more than three months.
- (7) As at the date of the CMD there continues to be rent arrears of greater than one month's rent which have been outstanding for more than 3 consecutive months.
- (8) The rent arrears are not wholly or partly due to a delay or failure in a relevant benefit.

## **Reasons**

9. This was an undefended application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. In accordance with the overriding objective, given the level of the arrears, the tribunal decided not to adjourn consideration of the CMD for the applicant to clarify the small discrepancy between the level of arrears in the notice to leave and the more detailed rent statement. The tribunal was satisfied that the eviction ground 12 was met and the arrears were not wholly or partly due to a delay or failure in a relevant benefit. The tribunal accordingly granted the order for eviction.

## **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.**

**18 September 2020**

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**Lesley A Ward Legal Member/Chair**

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**Date**