



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/23/1561

Re: Property at Flat 1, Caird House, 4 Scrimgeour Place, Dundee, DD3 6TU (“the Property”)

Parties:

Mr Mustafa Al-Saffar, c/o 22 Lytton Street, Dundee, DD2 1EU (“the Applicant”)

Mr Chokri Ben H Chamkhi, Flat 1, Caird House, 4 Scrimgeour Place, Dundee, DD3 6TU (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Sandra Brydon (Ordinary Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made.

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.

1. Attendance and Representation

The Applicant was not present and was represented by his wife, Ainsley Al-Saffar. The Applicant had forwarded an email authorising his wife to appear for him on 10th November 2023.

The Respondent was not present. He was served personally by Sheriff Officer on 18th October 2023. He had not provided any written representations to the Tribunal.

2. Preliminary Matters

There were no preliminary matters raised.

3. Case Management Discussion.

For the Applicant

The Applicant's wife submitted she sought an order for Eviction based on rent arrears. The tenant had been paying rent until June 2022. He missed a payment in June 2022 and thereafter the rent arrears did not recover. He sometimes made part payments. The Respondent completely stopped paying in February 2023. The Applicant's wife said they had applied for universal credit payments directly and these commenced. The payments have not covered rent of £450 per month. The universal credit payments started at £240 and have been consistently £365 per month since February 2023. The arrears as at the date of the application were £1929.04.

The Applicant's wife said they have contacted the Respondent when he stopped paying rent and he said he had sustained an injury and could not drive a taxi for work. They told him to go to local authority and the Respondent said he did that and he kept promising to make payment but this did not happen. The Applicant's wife said the Respondent became hostile of late and advised he would not be making any payments. This is the Applicant's only rental property. The Respondent lives alone and does not have children. The property is a one bedroom flat.

4. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had received notification of the proceedings personally by Sheriff Officer on 18th October 2023 and had not challenged same by written representations or attendance.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 1st January 2018. A Notice to Leave was sent to the Respondent on 27th March 2023.**
- 5. 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 in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents 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.**

6. At the date of the application on 3rd May 2023 the Respondent was in rent arrears to the amount of £1929.04. No payments to rent by the Respondent other than through Universal credit has been made to the rent arrears since February 2023. The Applicant has sent pre-action protocol letters on rent arrears.
7. 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. The Respondent was in receipt of universal credit which does not meet the contractual monthly rental payment of £450 per month.
8. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
9. Further the Tribunal was 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.
10. The Tribunal noted the Local Authority under the 2016 Act had been notified.
11. On the information given to the Tribunal by the Applicant's wife and representative which was credible the Respondent had no dependents, and had been working as a taxi driver until sustaining an injury. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
12. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent.
13. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.

Reasons for Decision

The Tribunal heard credible evidence of the Applicant's representative that the Respondent is in rent arrears and the Ground 12 was met. Rent statement and pre-action protocol letters for rent arrears were lodged. The Tribunal weighed up the circumstances and determined on balance that an order for Eviction was reasonable but would be subject to Cost of Living (Protection for Tenants)(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.

17th November 2023

Legal Member/Chair

Date