



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/23/1888

Property: 53 Stormyland Way, Barrhead G78 2RR (“Property”)

Parties:

Philip McCaig, 1 Carment Drive, Glasgow G41 3PP (“Applicant”)

Morton Fraser Lawyers, Quatermile Two, Lister Square, Edinburgh EH3 9GL (“Applicant’s Representative”)

Hazel Morgan and Kenneth Allan or Morgan 53 Stormyland Way, Barrhead G78 2RR (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 7 June 2023. The documents produced were: a Private Residential Tenancy Agreement dated 21 September 2019; Notice to Leave addressed to each Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 3 March 2023 (“March Notice to Leave”) in which the ground for eviction was ground 12; copy email dated 3 March 2023 attaching the March Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 8 April 2023; rent statement and communications to the Respondent regarding arrears dated 13 and 28 January 2023.

Case Management Discussion ("CMD")

A CMD took place before the Tribunal on 25 October 2023 by teleconference. Reference is made to the Note of the CMD. A continued CMD was fixed for 23 January 2024. In advance of the continued CMD the Applicant's Representative lodged : Notice to Leave addressed to each Respondent dated 7 November 2023 in which the ground for eviction was ground 12A ("November Notice to Leave") with sheriff officer execution of service thereof on 7 November 2023; copy letters from the Applicant's Representative to each Respondent dated 7 November 2023 and updated statement of rent arrears.

Continued CMD

A continued CMD took place before the Tribunal on 23 January 2024 by teleconference. The Applicant was in attendance and was represented by Alastair Johnston of the Applicant's Representative. There was no appearance by the Respondent.

The Tribunal noted that at the date of service of the November Notice to Leave the rent arrears were £6000 which was more than 6 months in arrears. Mr Johnston asked the Tribunal to allow the Applicant to rely upon the November Notice to Leave in exercise of its discretion under section 52(4) of the Act.

The Tribunal asked whether the Respondent had been in contact with the Applicant. Mr Johnston said that the Applicant had made a number of attempts to engage with the Respondent without success. The Applicant told the Tribunal that 2 teenage children lived in the Property with the Respondent. He said both Respondents were in employment when they took up the tenancy. He said there were no issues with the tenancy which would suggest a reason for non-payment of rent. He said the local authority had been in touch with him and he thought the Respondent may be getting a council house.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 21 September 2021 ("Tenancy Agreement").
2. The March Notice to Leave was served by email on 3 March 2023.
3. The November Notice to Leave was served by sheriff officer on 7 November 2023.

4. At the date of service of the November Notice to Leave the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 8 June 2023.
6. The Application was served on the Respondent on 18 September 2023.
7. Notification of the date of the continued CMD was sent to the Respondent on 29 November 2023.

Reasons for the Decision

The Tribunal determined to allow the Applicant to rely upon the November Notice to Leave in exercise of its discretion under section 52(4) as it was reasonable to do so.

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12A which states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*
- (2) *The First-tier Tribunal that the ground named in paragraph 1 applies if –*
 - (a) *the tenant has accrued rent arrears under the tenancy agreement in respect of one or more periods,*
 - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy agreement when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) *the tribunal is satisfied that it is reasonable to issue an eviction order*

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light

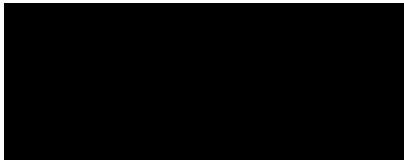
of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.



**Joan Devine
Legal Member**

Date: 23 January 2024