

Housing and Property Chamber
First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/0460 and FTS/HPC/CV/24/0459

Re: Property at 126b Clydesdale Road, Bellshill, ML4 2QL (“the Property”)

Parties:

Mr Darren McDivitt residing at 60 Grayling Road, Bellshill, ML4 2QL (“the Applicant”) and

Ritehome Ltd, 350 Glasgow Harbour Terraces, Glasgow, G11 6EG (“the Applicant’s Representative”) and

Miss Helen Whyte, residing at 126b Clydesdale Road, Bellshill, ML4 2QL (“the First Respondent”) and

Mr Stephen Jamieson, residing at 126b Clydesdale Road, Bellshill, ML4 2QL (“the Second Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
G. Darroch - Ordinary Member**

Decisions in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment to the Applicant, Mr Darren McDivitt, by the Respondents Miss Helen Whyte and Mr Stephen Jamieson, jointly and severally, of the sum of £4,250.00.**

Background

1. These are Applications for an eviction order in terms of Rule 109 (Application for an eviction order) and for a payment order in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

Case Management Discussion 20th June 2024

2. A Case Management Discussion (“CMD”) proceeded by remote teleconference call at 2.00pm on 20th June 2024.
3. The Applicant’s Representative’s Mr R. Nixon attended. The Respondents did not attend and there was no explanation for their absences. The Tribunal had noted that Sheriff Officers had served the Applications’ papers personally on the First Respondent, Miss Helen Whyte, on 20th May 2024 and, on the same date, had effected service of the papers on Mr Stephen Jamieson by posting them through the letterbox of the Property.
4. Mr Nixon said that his company, Ritehome Ltd, were instructed by Mr McDivitt to market the Property for sale as soon as it was possible do so. He stated that Mr McDivitt is a single man and does not let any other properties. Mr Nixon said that Mr McDivitt is in employment although he is not sure of the nature of Mr McDivitt’s work. He stated that the shortfall between the monthly rent due, of £650.00, and Mr McDivitt’s monthly outgoings for the Property, is £275.05. Mr Nixon stated that the arrears of rent are now in the sum of £4,900.00, with no rent having been paid by Miss Whyte and Mr Jamieson since November 2023. Mr Nixon said that Mr McDivitt can no longer sustain the monthly outgoings deficit, and increasing rent arrears, and requires to sell the Property. Mr Nixon acknowledged that he had only been able to send an updated rent statement, confirming rent arrears of £4,250.00, on 16th May 2024, which statement was crossed over to the Respondents. Mr Nixon submitted that, given the circumstances he had outlined, it was appropriate to have both the eviction order and payment order granted.

Findings in Fact and Law and Reasons for Decisions

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy (“PRT”) if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (1) in the 2016 Act provides that it is an eviction ground that the landlord intends to sell the property and that Tribunal may find that the ground applies if the landlord is entitled to sell the property and intends to sell it for market value, or at least to put it up for sale, within three months of the tenant ceasing to occupy it and if the Tribunal is satisfied that it reasonable to issue an eviction order on account of those facts.
7. Section 71 of the 2016 Act provides as follows:

- (1) In relation to civil proceedings arising from a private residential tenancy-
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.
8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for an eviction order and order for payment of unpaid rent against a tenant (such as the Respondents) in respect of a tenancy such as the tenancy agreement of the parties.
9. Having considered all of the documentary evidence, representations and the submission of Mr Nixon, the Tribunal finds in fact that the Applicant Mr McDivitt's Representative, Ritehome Ltd, had provided the Tribunal, in the Application for an eviction order, with copies of the parties' PRT, the Notices to Leave ("NTL") served on the Respondents, Miss Whyte and Mr Jamieson, on 1st November 2023 and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to North Lanarkshire Council on 29th January 2024. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied. The NTL, and the Application for an eviction order, proceed in terms of Schedule 3 (1) in the 2016 Act. Mr McDivitt is suffering ongoing and increasing financial loss due to Miss Whyte and Mr Jamieson's continuing non-payment of monthly rent due. He requires to sell the Property, being his only rented property, as cannot sustain the increasing loss. Mr McDivitt has engaged Ritehome Ltd to market and sell the Property as soon as he is legally entitled to do so. The Tribunal further finds in fact that when the Applications were lodged with the Tribunal's office, on 29th January 2024, Miss Whyte and Mr Jamieson were in rent arrears of £1650.00. They are currently in rent arrears in the sum of £4900.00. The amount of rent arrears being sought in these proceedings is the sum of £4250.00, being the rent arrears due at 16th May 2024, as that sum was intimated to Miss Whyte and Mr Jamieson when Sheriff Officers served copies of the Applications on them on 20th May 2024. Miss Whyte and Mr Jamieson are aware of their ongoing monthly obligations to pay rent, in the sum of £650.00, in terms of the parties' PRT but have not been formally notified of any increased payment order being sought in these proceedings following service of the Applications papers to them on 20th May 2024.
10. In making its findings in fact the Tribunal relied on the documentation within the Applications and, in particular, on the oral submission of Mr Nixon, the terms of which was consistent with the terms of the relevant documentation.
11. The Tribunal, in making their findings in fact, also placed reliance on the absence of any contradictory information or submissions from Miss Whyte and Mr Jamieson.

The papers in respect of both Applications had been served effectively on them on 20th May 2024. They are aware of the important nature of the Applications but had not lodged any representations regarding their merits. The Tribunal's office had not received any communications from any representatives or advisers acting on their behalf.

12. Accordingly, the Tribunal finds in law, that the ground in Schedule 3 (1) of the 2016 Act is met as Mr McDivitt seeks to sell the Property, being his only rented Property. The Tribunal further finds in law that it is reasonable that an eviction order, as well as a payment order, be granted, in particular given that Mr McDivitt is suffering a continuing and increasing financial loss due to Miss Whyte and Mr Jamieson's ongoing non-payment of monthly rent due. The amount of rent arrears sought in the amended Application for a payment order is £4250.00, and that sum was intimated to Miss Whyte and Mr Jamieson when the Applications papers were served on them. They have not received formal intimation that a payment order for a higher, current rent arrears sum may be sought. In these circumstances the Tribunal consider that it is fair and just to grant a payment order in the sum of £4250.00, which amount has been intimated to Miss Whyte and Mr Jamieson. Mr McDivitt may submit a fresh application to the Tribunal for a further payment order in respect of other rent arrears owing.

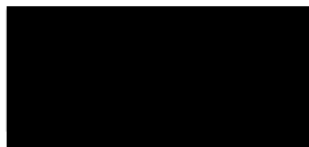
Decisions

13. Therefore, the Tribunal makes an order for eviction of the Respondents, Miss Helen Whyte and Mr Stephen Jamieson, from the Property and, also, an order for payment to the Applicant, Mr Darren McDivitt, by the Respondents Miss Helen Whyte and Mr Stephen Jamieson, jointly and severally, of the sum of £4250.00.

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.

G McWilliams



20th June 2024

Legal Member

Date