

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 Refs: FTS/HPC/EV/23/2783 and FTS/HPC/CV/23/2881

Re: Property at 16 Lairdshill Court, Kilsyth, G65 9LT (“the Property”)

Parties:

Mr Alexander McKellar residing at 1 Cawriggs Avenue, Kirkintilloch, G66 3BU (“the Applicant”) and

R & G Estate Agents, 57 Townhead, Kirkintilloch, Glasgow, G66 1NN (“the Applicant’s Representative”) and

Mr Chris Holley, residing at 16 Lairdshill Court, Kilsyth, G65 9LT (“the Respondent”)

Tribunal Members:

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

Decisions in absence of the Respondent

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 by the Respondent Mr Chris Holley to the Applicant Mr Alexander McKellar of the sum of £5,569.39.**

Background

1. These are Applications, both submitted on 14th August 2023, 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 10.00am on 20th June 2024. The Applicant’s Representative’s Miss McNulty, attended. The Respondent Mr Holley did not attend. Mr Holley had called the Tribunal’s office on 17th June 2024 to state that he would be unable to attend the CMD as he was not in “a good mental position”, and was awaiting contact from his doctor. In that call he stated that he was unable to send an e-mail but would send a letter to the Tribunal’s office seeking a postponement of the CMD. The Tribunal’s office received a handwritten letter from Mr Holley on 19th June 2024. In that letter Mr Holley stated that he was enclosing a letter asking for his case to be postponed to a later date due to “health reasons”. There was no letter enclosed. Mr Holley did not send the Tribunal any further information, details or any medical documentation supporting his application for a postponement. The CMD previously scheduled for 12th March 2024 had been postponed at Miss McNulty’s request due to her unavailability as a result of holiday absence. Given the lateness of Mr Holley’s postponement application, its lack of detail, and as the previous CMD had been postponed, the Tribunal considered that it was appropriate to proceed with the CMD. The Tribunal’s office’s caseworker had informed Mr Holley, during their call on 17th June 2024, that the CMD would proceed in his absence if the Tribunal had not granted a postponement. and he did not attend.
3. Miss McNulty stated that Mr McKellar is a retired police sergeant, is suffering from cancer and wishes to sell the Property to enable him to pay for an extension to his home which is necessary given his illness. She said that the Property is his only rented property. She referred to both Applications. She referred, in particular, to the Representative’s letter of engagement in respect of the proposed sale of the Property dated 12th October 2023, and the building works plans for the said extension, which had been drawn up for Mr McKellar by an architect. Miss McNulty said that Mr McKellar was seeking to commence work on the required extension as soon as the Property has been sold. Miss McNulty also stated that, the rent arrears when the Applications were submitted were in the sum of £4000.00 and, at 15th November 2023, when she submitted further documents to the Tribunal’s office, prior to the Tribunal’s acceptance of the Applications, they were in the sum of £5,569.39. She stated that the rent arrears are now in the sum of £10,301.91. During a pause in the CMD Miss McNulty sent an updated rent statement to the Tribunal’s office, showing current rent arrears of £11,101.91. She said that an updated rent statement had been requested by Mr Holley during her telephone conversation with him on 5th June 2024, and this had been posted out to him on 13th June 2024. Miss McNulty said that she understood that Mr Holley resided alone in the Property. She said that Mr McKellar, and his wife, were concerned that Mr Holley’s son, also Mr Chris Holley, had been involved in Court proceedings in

which he had referred to the Property as being his own address. She said that she understood that Mr Chris Holley Junior, his partner, and primary 1 age son reside in another property. Miss McNulty stated that Mr Holley had made various promises of payment of rent arrears over a long period of time. She acknowledged that the updated rent statement which she sent to the Tribunal's office, during the pause in the CMD, showed that Mr Holley had not paid rent directly since February 2023 and that four rent payments had been received from DWP Universal Credit in September, October, November and December 2023. Miss McNulty said that her office had recently received a communication from North Lanarkshire Council stating that two monthly rent/housing payments, each in the sum of £405.04, in terms of a grant of either Universal Credit or Pension Credit benefit to Mr Holley, were due to be sent directly to the Representative on 8th July 2024. Miss McNulty said that the history of non-payment, and unfulfilled promises to pay, and the time taken to progress the Applications, were all having an adverse effect on the health of both Mr McKellar and his wife. She submitted that, in all the circumstances, the orders sought in the Applications should be granted.

Findings in Fact and Law and Reasons for Decisions

4. 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.
5. 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 evidence order on account of those facts.
6. 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.
7. 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 Respondent) in respect of a tenancy such as the tenancy agreement of the parties.

8. Having considered all of the documentary evidence, representations and the submission of Miss McNulty, the Tribunal finds in fact that the Applicant Mr McKellar's Representative, R & G Estate Agents, had provided the Tribunal, in the Application for an eviction order, with copies of the parties' PRT, the Notice to Leave ("NTL") served on the Respondent Mr Holley, on 15th May 2023 and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to North Lanarkshire Council. 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 McKellar is suffering from cancer and requires to sell the Property, being his only rented property, in order to obtain funds to build an extension to his home to assist him in coping with his illness. Mr McKellar has engaged R & G Estate Agents to market and sell the Property as soon as he is legally entitled to do so. He has had building plans drawn up in respect of the proposed extension and will proceed with the necessary construction as soon as he has obtained funds from the sale of the Property. The Tribunal further finds in fact that at the time of acceptance of the Applications Mr Holley was in rent arrears in the sum of £5,569.39. He is now in rent arrears in the sum of £11,101.91. The amount of rent arrears being sought in these proceedings is the former amount, as that sum was intimated to Mr Holley when the Applications papers were sent to him by the Tribunal's office on 23rd January 2024. Mr Holley is aware of his ongoing obligation to pay rent, in the sum of £800.00, in terms of the parties' PRT but has not been formally notified of any increased payment order being sought in these proceedings following the issue of the Applications papers to him in January 2024.
9. In making its findings in fact the Tribunal relied on the documentation within the Applications, in particular the Representative correspondence with the Tribunal's office and their letter to Mr McKellar, and his wife dated 12th October 2023 regarding the proposed marketing and sale of the Property as well as the building plans which had been lodged. They also relied on the oral submission of Miss McNulty, the terms of which was consistent with the terms of the relevant documentation.
10. The Tribunal, in making their findings in fact, the also placed reliance on the absence of any contradictory information or submission from Mr Holley. Mr Holley sought to postpone the CMD, late, and without giving any detail of the health difficulty referred to in his request. The papers in respect of both Applications had been intimated to, and received by, Mr Holley. He is 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 representative or adviser acting on his behalf.
11. Accordingly, the Tribunal finds in law, that the ground in Schedule 3 (1) of the 2016 Act is met as Mr McKellar 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 the Applicant Mr McKellar's difficult health circumstances and his requirement to obtain funding from the sale of the Property to repurpose his own home in order to assist him in coping with

illness. The amount of rent arrears sought in the amended Application for a payment order is £5,569.39, and that sum was intimated to Mr Holley when the Applications papers were sent to him. Mr Holley has 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 £5569.39, which amount has been intimated to Mr Holley. Mr McKellar may submit a fresh application to the Tribunal for a further payment order in respect of other rent arrears owing.

Decisions

12. Accordingly, the Tribunal makes an order for eviction of the Respondent, Mr Holley, from the Property and, also, an order for payment by Mr Holley to the Applicant, Mr McKellar, of the sum of £5,569.39.

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

Legal Member

20th June 2024

Date