

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/24/1112

Re: Property at 214 Oakbank Street, Airdrie, Lanarkshire, ML6 8LD (“the Property”)

Parties:

Ms Karen McArthur, Flat 4, Portland Stables, 6 Portland Brae, Hurlford, Kilmarnock, KA1 5AL (“the Applicant”)

Landlord Agents, 5 South Charlot Street, Edinburgh, EH2 4AN (“the Applicant’s Representative”)

Mr Kyle Watson, 14 Oakbank Street, Airdrie, Lanarkshire, ML6 8LD (“the Respondent”)

Tribunal Members:

Ms. Susanne L. M. Tanner KC (Legal Member)

Mr Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

(1) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; that it was reasonable to make an order for

eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act;

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant made an application to the tribunal on 7 March 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).
2. The Applicant seeks the Respondent’s eviction from the Property under Section 51 of the 2016 Act on Ground 12 of Schedule 3 to the 2016 Act.
3. The Applicant provided the following documents in support of the Application:
 - 3.1. Agent’s mandate;
 - 3.2. Private Residential Tenancy Agreement, start date 25 October 2022;
 - 3.3. Rental statement;
 - 3.4. Notice to Leave;
 - 3.5. Email service Notice to leave;
 - 3.6. Emails sent to Respondent regarding non payment of rent;
 - 3.7. Pre notice of legal action;
 - 3.8. Title deeds; and
 - 3.9. Section 11 notice to local authority and proof of service.
4. The tribunal’s administration obtained a copy of the title sheet for the Property which show that the Applicant has been the registered proprietor since 1 November 2022.
5. On 2 April 2024, the Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) teleconference was fixed for 25 July 2024 at 1000h.
6. The tribunal sent letters of notification to all parties dated 14 June 2024 with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application. The Respondent was invited to make written representations in response to the Application by 5 July 2024. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including

making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

7. Service of the Application paperwork and notice of the CMD on the Respondent on at the Property by Sheriff Officers was successful.
8. The Respondent did not submit any representations in the specified time period.
9. The Respondent did not make any contact with the tribunal.
10. On 16 July 2024, the Applicant's Representative lodged an updated rental statement and a revised Application seeking to amend the Application to seek the increased sum of £4590.00 in respect of rent arrears to 16 July 2024. A copy was sent to the Respondent.

CMD: 25 July 2024, 1000h, Teleconference

11. Mr Jeffrey Livingston attended from the Applicant's representative.
12. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

Applicant's Representative's submissions

13. The rental statement dated 16 July 2024 shows that the rent arrears as at 16 July 2024 were £4590.00. The Respondent has been in continuous arrears since 25 June 2023. The last rental payments made by the Respondent were payments of £91 and £509 on 16 November 2023.
14. Mr Livingstone explained that the letting agent has had difficulty engaging with Mr Watson since November 2023. There has been very little communication. There have been incidents outside the property and currently Police Scotland are investigating a complaint in relation to the Respondent. The letting agent and Applicant's Representative have been asked by Police Scotland not to communicate with the Respondent any further so no further attempts have been made to communicate.

15. A payment plan was considered in around November last year but never materialised.
16. Pre action protocol letters were sent by the Applicant's Representative to the Respondent, as well as a letter before action.
17. The Notice to Leave was issued on 3 January 2024, with an expiry on 3 February 2024. The rental account statement was attached to the notice. The rental statement shows that the rental arrears at the date of service of the notice to leave as £1027. At that time there had been arrears since June 2023.
18. The Applicant's Representative said that as far as he is aware, the Respondent is not in receipt of benefits. The letting agent applied for arrears direct to DWP for Universal credit. DWP replied and said that there is no claim in place. The rent has always come via the Respondent. It has not come via the DWP. The Applicant's Representative has not been made aware that the failure to pay rent is because of a delay in benefits.
19. As far as the Applicant's Representative is aware, the Respondent is living in the Property. They have been unable to establish what his income is due to the breakdown in relationship and the issues involving the police. The letting agent has previously been made aware that he had a kinship care of possibly two daughters living in the Property. As far as they are aware that is still in place. The agents have sent an email to Children & Families to advise of the Application. The letting agent has never seen children in the property. He believes that the children are of school age.
20. The Respondent may have taken ownership of a new car which is in the driveway of the property. The older vehicle may have been replaced. Information has been obtained that he is driving the vehicle every day.
21. The Applicant's Representative is unaware of the last date that the letting agent was actually in the property. The incident which resulted in a police report took place outside the property. There have been no other material issues with the tenancy itself other than non-payment of rent. The letting agent is not aware why the tenant has stopped paying rent from November 2023. There has been no information relayed back by the Respondent. The Applicant's Representative has also sent emails to the Respondent and there has been no response.
22. The Applicant's Representative asked the tribunal for an eviction order to be made today.

23. The tribunal adjourned to consider matters.

24. The tribunal makes the following findings-in-fact:

- 24.1. The Applicant is the registered proprietor of the Property.
- 24.2. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which began on 25 October 2022.
- 24.3. Rent is payable at the rate of £595.00 per calendar month on the 16th day of each month in advance
- 24.4. Prior to making the Application, the Applicant's agent wrote to the Respondent about the rent arrears with pre-action options.
- 24.5. On 3 January 2024, a Notice to Leave containing ground 12 of Schedule 3 to the 2016 Act was served on the Respondent.
- 24.6. The Applicant has given the Respondent at least 30 days' notice that he requires possession.
- 24.7. The Application to the tribunal was made on 7 March 2024.
- 24.8. As at 25 July 2024, there have been rent arrears for more than three consecutive months.
- 24.9. As at 25 July 2024, the Respondent was in arrears of rent of £4590.00.
- 24.10. The Respondent last paid rent in November 2023.
- 24.11. The Applicant's Representative has attempted to contact the Respondent. The Respondent has not responded to any contact.
- 24.12. Following a report to Police Scotland relating to an incident outside the Property, the Applicant's Representative has been advised by Police Scotland not to attempt to make further contact with the Respondent.
- 24.13. The Respondent continues to reside in the Property.
- 24.14. The Respondent has kinship care of two daughters.

24.15. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

24.16. The Respondent has not opposed the application for eviction.

25. Findings in fact and law

25.1. The tribunal is satisfied that the facts required in paragraph 12(2) of Schedule 3 to the 2016 Act have been established.

25.2. The tribunal is satisfied it is reasonable to make an order for possession.

Discussion

26. The order for eviction is sought in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

27. In relation to reasonableness, reference is made to the tribunal's findings in fact. The Respondent has not opposed the application for eviction. He has not produced any defence. He has had the opportunity to obtain legal or housing advice. He has not notified the tribunal that he has appointed any representative. There is insufficient evidence about whether he has children living with him on a regular basis. There is no evidence that he is on any relevant benefits or that there is any other reason why it would not be reasonable to evict him from the Property.

28. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

S.Tanner

25 July 2024

Legal Member/Chair