



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/24/1653

Re: Property at 32 Victory Avenue, Gretna, DG16 5AB (“the Property”)

Parties:

Amy Balfour (nee Steele) and David Balfour, residing together at 438 Falls Road, RD 2, Waerenga, Te Kauwhata, New Zealand, 3782, New Zealand (“the Applicants”)

Stephanie Jarzyna, 32 Victory Avenue, Gretna, DG16 5AB (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1. This is an application for an eviction order in regard to a Private Residential Tenancy (“PRT”) made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (“the Rules”). The PRT is between the Parties and relates to the Property. The tenancy commenced on 12 September 2019.**
- 2. The application relies upon a Notice to Leave dated 16 February 2024, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by recorded delivery mail on 16 February 2024, all in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that “the tenant has been in rent arrears for**

three or more consecutive months". The Notice to Leave intimated that an application to the Tribunal would not be made before 18th March 2024.

3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon Dumfries and Galloway Council by email on 11 April 2024.
4. The Application papers also included a letter from the Applicants' letting agents dated on or around 28 March 2024 addressed to the Respondent in which the Applicant sought to provide the Respondent with information and advice in relation in compliance with the pre-action protocol prescribed by the Scottish Ministers.

Case Management Discussion

5. A Case Management Discussion ("CMD") took place by teleconference on 19 July 2024. The Applicants were represented at the CMD by John Jarvie, trainee solicitor. The first applicant also joined the conference call from New Zealand/ The first applicant listened to proceedings at the CMD but did not otherwise participate in the CMD.
6. The Respondent did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondent by Sheriff Officers on 17th June 2024. The Respondent has not made any written representations to the Tribunal in advance of the CMD. The Tribunal was satisfied that the Respondent had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules") had been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.
7. At the CMD the Tribunal was able to consider:
 - a. The terms of the tenancy agreement between the parties. The tenancy agreement was a Private Residential Tenancy Agreement in relation to the Property. The tenancy between the parties had commenced 12 September 2019. The initial monthly rent due in terms of the tenancy agreement between the parties was £500.00. The rent due in terms of the tenancy agreement had thereafter been increased to £505 per month.
 - b. A Statement of rent and arrears had been lodged with the Application showing total rent arrears due by the Respondent as of 12 June 2024 in the sum of £4790.00

Findings in Fact and Law

- 8. The Applicants are the owners of the Property.**
- 9. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on on12 September 2019 ("the Tenancy"). The rent charged under the tenancy agreement is currently £505 per month.**
- 10. The Applicant has issued a Notice to Leave dated 16 February 2024 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by recorded delivery mail dated 16 February 2024.**
- 11. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 11th April 2024.**
- 12. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dumfries and Galloway Council on the Applicant's behalf on 11 April 2024.**
- 13. The respondent has been in rent arrears for three or more consecutive months. He is not currently paying ongoing rent due in terms of the tenancy between the parties and has made no payment in respect of rent due or arrears accrues since 30 August 2023.**
- 14. It is reasonable to issue an eviction order.**

Reasons for Decision

- 15. The Tribunal were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.**
- 16. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made by the parties. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.**
- 17. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:**
 - (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months....****and that...**

- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—**
- (a) for three or more consecutive months the tenant has been in arrears of rent, and**
 - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.**

18. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. The Respondent has not paid his rent since August 2023 and has accrued arrears of ££4790 as at the date of this hearing. On that basis the Tribunal determined that paragraph 3(1)(a) of Ground 12 was satisfied.

19. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph 3(2) of Ground 12.

20. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

21. In this case the tribunal finds that it is reasonable to grant the order.

22. At the CMD the Applicants representative advised the tribunal that the Respondent stopped paying rent due in terms of the tenancy agreement between the parties from August 2023. He has accrued significant arrears of rent in the sum of £4790 as at the date of the tribunal. The Applicants letting agents have written to the Respondent reminding him of his obligation to pay rent and to request payment of rent arrears which have accrued. The Respondent has not engaged with the Applicants or their letting agents in relation to these rent arrears and has not made any proposal to pay current rent or the arrears of rent which have accrued. The Applicants wish to recover possession of the property because of the level of rent arrears which have been accrued by the Respondent. The Applicants now live permanently in New Zealand. They now wish to sell the Property. The Applicants are currently paying £538 per month to the mortgage over the Property. In addition, they pay rental insurance costs of £74 per month. The Applicants cannot afford to keep continue to pay these obligations due to the failure of the Respondent to pay his rent. The Applicants' representative advised that the Respondent's failure to pay rent for the Property was financially crippling for the Applicants. The Respondent has not made any payments of rent for over 10 months and the Applicants cannot afford to allow the respondent to continue to live in the property whilst no rent has been paid.

23. The Applicant's solicitor advised the tribunal that the Applicant's letting agent had received an email from the Respondent on the day before the CMD. In that email the Respondent advised the letting agent that he was

moving into bed and breakfast accommodation and that intended to return the keys to the Property.

24. The Tribunal consider that it is reasonable to grant the eviction order. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal took account of the fact that the Respondents despite being given an opportunity to submit written representations to the Tribunal and to attend the CMD had chosen to do neither. It is not reasonable to require the Applicants to maintain the Lease whilst no rent is paid by the Respondent.

25. The balance of reasonableness is weighted towards the Applicants.

26. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

27. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

28. The decision of the Tribunal is unanimous.

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.

A.Cowan

19 July 2024

Legal Member/Chair

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Date