



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/24/1755

Property : 92 Cardross Crescent, Broxburn EH52 6HZ (“Property”)

Parties:

Roy Stockburn, 11 Manor Farm Crescent, Leeds LS27 7RW (“Applicant”)

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG (“Applicant’s Representative”)

Charlaine Walker and William Walker, 92 Cardross Crescent, Broxburn EH52 6HZ (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to grant an order for possession of the Property and to delay enforcement until 29 November 2024.

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Tenancy Agreement which commenced on 1 March 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 4 March 2024 ("Notice to Leave"); copy email to the Respondent attaching the Notice to Leave dated 4 March 2024; statement of rent arrears; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 16 April 2024 and sheriff officer's execution of service certifying service of the Application on the Respondent on 19 August 2024. On 5 September 2024 the Applicant lodged an updated statement of rent arrears which indicated that the arrears were £3105 as at 1 September 2024.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 19 September 2024 by teleconference. The Applicant was represented by Alexandra Wooley of the Applicant’s Representative. Both Respondents were in attendance.

Mrs Walker told the Tribunal that the Respondents live in the Property with their daughter who is aged 4. She said her daughter attends Broxburn nursery and will go to school in 2025. Mrs Walker told the Tribunal that she has been in touch with West Lothian Council and Wheatley Housing about alternative accommodation. She said that she applied to Wheatley 3/4 months ago at which time she was number 200 on their list. She said that her housing application shows that she is now number 1. She said that Wheatley have built new homes in the Deans area and she hoped one of those houses may soon be made available for her to bid on. She said she had been bidding on properties for 2/3 months.

Mrs Walker told the Tribunal that she is a manager at the local nursery and she is now able to work additional hours by doing holiday clubs. She said she is also a mentor for a staff member. Mrs Walker told the Tribunal that she had been a child minder but that had fallen through. She said that was when the rent arrears started to increase. Mrs Walker said that she and Mr Walker are not in receipt of housing benefits.

Mrs Walker told the Tribunal that Mr Walker is a lorry driver and that he was in the process of changing job. She said he starts a new job on 23 September 2024. She said that the application for time to pay in the civil application does not include her husband’s income as he is in the process of changing job. She said that he had been earning £370 per week and hoped to earn £460 per week in his new job.

Ms Wooley told the Tribunal that the Applicant owns two other rental properties in addition to the Property. She did not have information regarding the current mortgage payments on the Property. She said the Applicant was concerned that the rent had been in arrears for some time and had increased significantly since April 2024. She said that the Applicant would relet the Property if an order for possession was made.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 1 March 2022.
2. The Notice to Leave was served by email on 4 March 2024.

3. At the date of service of the Notice to Leave and the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 16 April 2024.

Reasons for the Decision

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 Notice to Leave the Applicant stated that they sought recovery of possession of the Property on the basis set out in ground 12 which is that the tenant has been in rent arrears for three or more consecutive months. The Tribunal considered the statement of rent arrears provided and determined that ground 12 had been established.

Having considered all of the circumstances, including the oral representations by the Parties, the Tribunal determined that it was reasonable to issue an eviction order. The Tribunal determined to delay enforcement of the order until 29 November 2024 in order to provide additional time for the Respondent to obtain alternative accommodation.

Decision

The Tribunal grants an order for possession of the Property and delays enforcement until 29 November 2024.

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 : 19 September 2024