

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/0320

Re: Property at 3 Boswell Drive, Blantyre, Glasgow, G72 0BJ (“the Property”)

Parties:

Mr Steven Magill, 30 Marlborough Heights, Belfast, BT6 9QR (“the Applicant”)

Miss Natasha Connor, 3 Boswell Drive, Blantyre, G72 0BJ (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.

Background

1. By application dated 17 January 2024 the applicant seeks an order for eviction, relying on ground 12 (rent arrears for three or more consecutive months) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was conjoined with application reference FTS/HPC/CV/24/0321 seeking an order for payment of arrears in the sum of £5940.
3. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Letter to the respondent with Notice to Leave and Guidance dated 10 November 2023 with proof of delivery

- Rent statements
 - Pre action emails to the respondent dated 8, 15 and 29 August, 5 and 12 September and 3 October all 2023.
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.
4. A case management discussion (“cmd”) was assigned for 23 September 2024.

Case management discussion – 7th November 2022- teleconference

5. The applicant was represented by Ms Wooley, solicitor from Bannatyne Kirkwood France & Co. The respondent was not present or represented. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29.
6. Ms Wooley advised that arrears at 9 September 2024 amounted to £5940. She explained that as per the rent statements which had been lodged, the respondent had not paid any rent since November 2023. Ms Wooley advised that as far as the applicant was aware the respondent was still resident in the property however she had not been in contact with the applicant’s agents since earlier in the year when she had contacted to cancel an inspection.
7. Ms Wooley advised that the respondent had been in employment when the lease was signed. She resided in the property with her child however the applicant had no further information regarding the respondent’s personal circumstances.

Findings in fact and law

8. Parties entered into a tenancy agreement with a commencement date of 23 November 2021.
9. Monthly rent due in terms of the agreement is £495.
10. Arrears as at 9 September 2024 amounted to £5940.
11. The respondent has not made any payments towards the rent or arrears since November 2023.
12. The applicant complied with the pre-action protocols set out in sch.3 para.12(4)(b) of the Private Housing (Tenancies) (Scotland) Act 2016.
13. Ground 12, in schedule 3 of the 2016 Act has been established.

Reasons for the decision

14. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Ms Wooley’s submissions at the cmd.

15. Ground 12 states:

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

16. The Tribunal was satisfied on the basis of the rent accounts that had been lodged that the respondent had been in arrears of rent for a period in excess of three months.

17. In relation to the question of reasonableness the Tribunal determined that the correspondence sent to the respondent complied with the pre-action protocols. The respondent had regard to the email correspondence that had been lodged and accepted that the respondent had been provided with information relating to the rent arrears and guidance on how to access assistance in compliance with the pre-action protocols on multiple occasions.

18. The Tribunal was satisfied that the arrears at the property amounted to £5940 as at the date of the cmd. The respondent had not lodged any information which sought to demonstrate that the arrears were in any part due to issues with benefits.
19. The Tribunal took into account the information provided by Ms Wooley. The Tribunal noted the high level of arrears, which continued to rise and that no contact or payment had been made by the respondent for a considerable period of time.
20. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence.
21. The Tribunal gave weight to the fact that the respondent had resided in the property with her child but in the absence of any opposition to the application and taking into account the high level of arrears the Tribunal considered that this factor did not outweigh the factors in favour of granting an order.
22. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for eviction.

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.

Mary-Claire Kelly

Legal Member _____

Date