

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 Ref: FTS/HPC/EV/24/2275 and FTS/HPC/CV/24/2276

Re: Property at 21 Adams Walk, Irvine, Ayrshire, KA12 0JY (“the Property”)

Parties:

Mrs Mary Reid and Mr Peter Reid, 26 Crannog Way, Kilwinning, Ayrshire, KA13 6NW (“the Applicants”)

Mrs Sally Brown, 21 Adams Walk, Irvine, Ayrshire, KA12 0JY (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
D Fotheringham - 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 to the Applicants, Mrs Mary Reid and Mr Peter Reid, by the Respondent Mrs Sally Brown of the sum of £5450.00.**

Background

1. These are Applications 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 12th November 2024

2. A Case Management Discussion (“CMD”) proceeded by remote teleconference call at 2.00pm on 12th November 2024.
3. The Applicants Mr and Mrs Reid attended. The Respondent Mrs Brown did not attend and there was no explanation for her absence. The Tribunal had noted that Sheriff Officers had served the Applications’ papers on the Respondent on 4th October 2024 by posting them through the letterbox of the Property.
4. Mrs Reid referred to the Applications and the most recent Rent Statement, which she sent to the Tribunal’s office by email on 21st October 2024. She said that Mrs Brown last paid rent, of £650.00, on 10th April 2024. Mrs Brown stated the current outstanding rent arrears are in the sum of £5450.00 and that a further rent payment is due on 15th November 2024. She said that Mrs Brown lives in the Property alone, having previously shared the tenancy with her daughter. She further said that she understands that Mrs Brown works in a banking call centre. She stated that the Applicants have not received any contact from Mrs Brown since April 2024. Mrs Reid submitted that, given the circumstances she had outlined, it was appropriate to have both the eviction order and payment order granted.

Findings in Fact and Law and Reasons for Decisions

5. 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.
6. Schedule 3 (12) (1) to the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
7. 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.
8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) 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.

9. Having considered all of the documentary evidence, representations and the submission of Mrs Reid, the Tribunal finds in fact that the Applicants have provided the Tribunal, in their Application for an eviction order, with copies of the parties' PRT, the Notice to Leave ("NTL") served on the Respondent on 25th February 2024 and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to North Ayrshire Council on 17th May 2024. 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. The Tribunal further finds in fact that when both Applications were lodged with the Tribunal's office, on 17th May 2024, Mrs Brown was in rent arrears of £2200.00. She has not paid any rent to the Applicants since 10th April 2024 and is currently in rent arrears in the sum of £5450.00.00.
10. In making its findings in fact the Tribunal relied on the documentation within the Applications and, in particular, on the oral submission of Mrs Reid, the terms of which was consistent with the terms of the relevant documentation.
11. The Tribunal, in making their findings in fact, also placed reliance on the absence of any contradictory information or submissions from the Respondent. The papers in respect of both Applications had been served effectively on her on 4th October 2024. She is aware of the important nature of the Applications but has not lodged any representations regarding their merits and the reasonableness of the grant of the orders sought. The Tribunal's office has not received any communications from the Respondent or any representatives or advisers acting on her behalf.
12. Accordingly, the Tribunal finds in law, that the ground in Schedule 3 (1) of the 2016 Act is met as the Respondent has been in rent arrears for three or more consecutive months and that it is reasonable that an eviction order be granted. The Tribunal also find in law that the Respondent is obliged to pay rent to the Applicants, in terms of the parties PRT, and, having not done so consistently, is in rent arrears in the sum of £5450.00. The Tribunal therefore find that the Applicants are entitled to an order for the Respondent's payment to them of the sum £5450.00. The Applicants may submit a fresh application to the Tribunal for a further payment order in respect of other rent arrears owing to the date of these decisions.

Decisions

13. Therefore, the Tribunal makes an order for eviction of the Respondent, Mrs Sally Brown, from the Property at 21 Adams Walk, Irvine, Ayrshire KA12 0JY and, also, an order for payment to the Applicants, Mrs Mary Reid and Mr Peter Reid, by the Respondent, Mrs Sally Brown, of the sum of £5450.00.

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

12th November 2024
