



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/3133

Re: Property at Flat 1/2, 19 Lomond Street, Helensburgh, G84 7PW (“the Property”)

Parties:

Mr Ian Stewart, Burnsland, Main Road, Cardross, G82 5NY (“the Applicant”)

Mr Thomas Bell, Flat 1/2, 19 Lomond Street, Helensburgh, G84 7PW (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 12 of schedule 3 of the 2016 Act.

1. Background

- 1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of paragraph 3 of schedule 3 of the 2016 Act, that being that the Respondent had fallen into arrears of rent. The application was accompanied by, amongst other things, copies of the written tenancy agreement between the parties, the notice to leave given to the Respondent, correspondence sent to the Respondent and a rent statement.
- 1.2 No written representations had been received from the Respondent in advance of the Case Management Discussion. The application was conjoined with application reference FTS/HPC/CV/24/3134.

2. Case Management Discussion

- 2.1 The Case Management Discussion took place on 9 December 2024 by teleconference. The Applicant was represented by Ms Wooley of Bannatyne Kirkwood France & Co, solicitors. The Respondent was represented by Ms Richardson of Argyll and Bute Homeless Services.
- 2.2 The Tribunal heard firstly from Ms Wooley. She advised that the Applicant was seeking an eviction order given the accrued rent arrears. The arrears were now £10,000. The Respondent first fell into arrears in June 2021. Whilst payments had been made by the Respondent since then, those payments were insufficient and the arrears had increased. No payment had been made since service of the notice to leave. The Applicant had complied with the pre-action protocols and an email sent to the Respondent on 21 March 2024 was evidence of this. The property had a mortgage secured over it and the Applicant's ability to make payment was impacted due to the arrears. The Respondent was believed to live alone and had previously indicated the arrears had accrued due to issues with his mental health and his father passing away. There had not been any formal payment arrangement entered into with the Applicant. The Applicant's letting agent had written to the Respondent throughout the tenancy encouraging him to contact them to discuss the arrears. The last contact was in July 2024 but Ms Wooley was not aware of the substance of this. Rent payments had come from the Respondent as opposed to the Department of Work & Pensions.
- 2.3 Ms Richardson confirmed that she was an area housing officer with the local authority. They first had contact with the Respondent on 31 August 2024. She met with him on 21 November 2024. The Respondent struggled with technology and could not attend. The arrears were accepted by the Respondent as being £10,000. The applications were not being opposed. The Respondent had accrued arrears as a result of struggles with his mental health during which he had turned to alcohol. He was 45 years old and lived alone. He had children that resided with his ex-partner. He was employed on a part time basis and also received benefits. The local authority would have an obligation to provide temporary accommodation to the Respondent. Ms Richardson was responsible for decisions on applications for assistance under the Housing (Scotland) Act 1987 but no decision had been made in respect of the Respondent. Housing support could also be provided to those struggling to maintain tenancies as the local authority were obliged to attempt to prevent homelessness. In the event the Tribunal granted the order sought, no extended period before it could be enforced was being requested.
- 2.4 Following a short adjournment, the Tribunal confirmed that it was to grant an eviction order as sought by the Applicant.

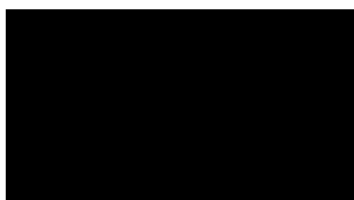
3. Reasons For Decision

3.1 The Tribunal did not consider that a hearing was required and proceeded to determine the application as permitted by Rule 18 of the Chamber rules. The Applicant had served the requisite notice to leave upon the Respondent. A rent statement detailed the arrears outstanding which were accepted by the Respondent. The ground contained in paragraph 12 of schedule 3 of the 2016 Act therefore applied. Accordingly, the Tribunal required to consider whether it was reasonable to grant an order for recovery of possession.

3.2 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant had made efforts to comply with the pre action protocols and had written to the Respondent providing the prescribed information. The arrears were now equivalent to 22 months' worth of rent. The applications were not being opposed by the Respondent. No proposals for repayment of the arrears had been made. The Respondent had an income and entitlement to welfare benefits. Whilst it was accepted he may have suffered from mental health issues, this did not explain the extent of the arrears. The Respondent lived alone without any dependent children. The Tribunal therefore considered that it was reasonable to grant the order.

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.



Legal Member/Chair

Date 9 December 2024