

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 Refs: FTS/HPC/EV/24/1376 and FTS/HPC/CV/24/1378

Re: Property at 1A Charlotte Avenue, Torrance, G64 4BB (“the Property”)

Parties:

Mr Graham Kidd, Locksley, School Road, Torrance, G64 4BZ (“the Applicant”)

and

Mr Adam Mills, 1A Charlotte Avenue, Torrance, G64 4BB (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

J Heppenstall - 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 Applicant, Mr Graham Kidd, by the Respondent, Mr Adam Mills, of the sum of £20,837.27.**

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 Discussions on 17th September 2024 and 20th September 2024.

2. A Case Management Discussion (“CMD”) proceeded on both of the above dates. Reference is made to the CMD Notes.

Hearing on 31st January 2025

3. An evidential Hearing proceeded by remote teleconference call at 10.00am on 31st January 2025. The Applicant, Mr Kidd, attended. The Respondent, Mr Mills, did not attend and there was no explanation for his absence. Mr Mills had attended the CMD on 17th September 2024 as well as the subsequent CMD on 20th September 2024. The Tribunal noted that intimation of the evidential Hearing was sent by e-mail to Mr Mills on 18th December 2024 by the Tribunals office.
4. Mr Kidd referred to the Rent Statement which he had lodged with the Tribunal’s office on 15th November 2024. The outstanding rent due at that date was in the sum of £19,287.27. He re-iterated that he had not been paid the tenancy deposit sum of £1,550.00, and that he has not received payment of any monies from Mr Mills in respect of the parties’ Private Residential Tenancy Agreement (“PRT”). Mr Kidd further stated that he had been unwilling to attend near the Property for safety reasons but had been told, by neighbours in the street in which the Property is situated, that the curtains had been drawn with lights on inside the Property for several weeks. He said that the neighbours had also reported to him that Mr Mills’ motor vehicle had not been parked at the Property for the same time period. Mr Kidd re-iterated that the Property was his only owned home, that he continues to rent a flat in Kilsyth and that his circumstances are continuing to cause him financial hardship. He stated his intention to move back into the Property as soon as possible for family reasons and asked the Tribunal to grant both Applications.

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 Applicant) 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 oral evidence and submission of Mr Kidd, the Tribunal finds in fact that Mr Kidd has provided the Tribunal, in his Application for an eviction order, with copies of the parties' PRT, the requisite Notice to Leave ("NTL") and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice. 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, in respect of both Applications lodged with the Tribunal's office, the last Rent Statement sent to Mr Mills, in November 2024, showed rent arrears of £19,287.27. They found that Mr Mills has not paid any rent, or deposit monies of £1,550.00, to Mr Kidd since the parties' PRT commenced in January 2024 and that the aggregate sum owing by Mr Mills to Mr Kidd, and properly sought through the Applications, is £20,837.27.
10. In making their findings in fact the Tribunal relied on the documentation within the Applications and, in particular, on the oral evidence of Mr Kidd, the terms of which were consistent with his submissions at the previous CMDs and 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 Mr Mills. Mr Mills is aware of the important nature of the Applications but did not lodge documentation referred at the previous CMDs and did not attend at the evidential Hearing, without any explanation.
12. Accordingly, the Tribunal finds in law that the ground in Schedule 3 (1) of the 2016 Act is met as Mr Mills 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 Mr Mills is obliged to pay rent and deposit monies to Mr Kidd, in terms of the parties PRT, in the aggregate sum of £20,837.27. Mr Kidd may submit a fresh Application to the Tribunal for a further payment order in respect of other rent arrears owing.

Decisions

13. Therefore, the Tribunal makes an order for eviction of the Respondent, Mr Adam Mills, from the Property at 1A Charlotte Avenue. Torrance, G64 4BB and, also, an order for payment to the Applicant, Mr Graham Kidd, by the Respondent, Mr Adam Mills, of the sum of £20,837.27.

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

31st January 2025
