

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/19/1077

Re: Property at 155 Main Street, Camelon, Falkirk, FK1 4DX (“the Property”)

Parties:

Harry Dhillon Holdings Limited, Unit 8, Grange Court, Earls Gate Business Park, Grangemouth, FK3 8ZF (“the Applicant”)

Ms Wendy Clarkson, 155 Main Street, Camelon, Falkirk, FK1 4DX (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made in favour of the Applicant.

1. Background

1.1 This was an application made under Rule 109 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) that being an application for an eviction order in respect of a Private Residential Tenancy. The application was accompanied by copies of a rent statement, affidavits from Mrs Baljit Dhillon and Mr James Martin, a notice to leave and execution of service and a notice to the local authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003.

1.2 Prior to the Case Management Discussion, the Applicant had also lodged an up to date statement of the rent account confirming the present balance.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 2 July 2019. Mrs Baljit Dhillon, director of the Applicant attended alongside her representative, Mr Dougal Grant, Solicitor. The Respondent was neither present nor was she represented. There had been no written representations received by the Tribunal from her.

2.2 The Applicant's representative confirmed that the Applicant wished the Case Management Discussion to proceed. The Tribunal considered that the Respondent had been given proper notice of the Case Management Discussion in terms of the Rules and considered it appropriate to proceed in her absence.

2.3 The Tribunal heard from Mrs Dhillon and her representative. It was confirmed that there was no written tenancy agreement. The Respondent had been provided with the Property for her exclusive use. It was a two bedroom property. She currently resided there with her partner and four children. A notice to leave had been hand delivered to the Respondent on 22 January 2019. An eviction order was being sought only on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") relating to rent arrears. The rent payable in respect of the Property was £115 per week. The tenancy agreement had commenced on 5 September 2018. All payments made by the Respondent had been made in cash. There had never been any payments received from the local authority or the Department for Work and Pensions. At or around the time of service of the notice to leave, Mrs Dhillon has contacted Falkirk Council who had advised there was no benefit claim by the Respondent. The balance as of the date of the Case Management Discussion was £3395.00 and there had been no contact from the Respondent lately.

3. Reasons for Decision

3.1 The Tribunal proceeded on the basis of the written representations before it and the submissions by the Applicant and her representative at the Case Management Discussion. The Tribunal did not believe it was necessary to fix a hearing and proceeded to make an order under Rule 17(4) and Rule 18 of the Rules.

3.2 The Tribunal considered that a valid Private Residential Tenancy within the meaning of Section 1 of the 2016 Act had been created between the parties. The Property was let as a separate dwelling, occupied by the Respondent as her principal home and was not one listed in Schedule 1 of the 2016 Act. A written tenancy agreement is not required to lawfully constitute a Private Residential Tenancy by virtue of Section 3 of the 2016 Act. The rent payable was £115.00 per week. A valid notice to leave had been provided, giving the correct period of notice for the relevant ground specified, being Ground 12. The Tribunal accepted the terms of the affidavits and the additional submissions made at the Case Management Discussion by the Applicant and her representative.

3.3 Section 51(1) of the 2016 Act states as follows:-

The First-tier Tribunal is to 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.

Ground 12 of Schedule 3 of the 2016 Act is relied upon in the present application and is in the following terms:-

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

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Case Management Discussion constituted the day on which the Tribunal first considered the application on its merits. As of that day, £3395.00 rent had gone unpaid, substantially in excess of one month's rent. The Respondent had been in arrears since 12 September 2019 as evidenced by the statements of the rent account lodged in support of the application. There was nothing before the Tribunal to suggest that the rent arrears were as a result of a delay or failure in the payment of a relevant benefit. Mrs Dhillon confirmed that no payment had ever been received via the local authority or the Department of Work and Pensions by virtue of a housing benefit or Universal Credit claim respectively. Accordingly, the Tribunal was required to find that Ground 12 applied and had no discretion as to whether to issue an eviction 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

5 July 2019

Date