

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/19/1173

Re: Property at 31 Branchal Road, Wishaw, ML2 8PD (“the Property”)

Parties:

Mr Faryad Sharfi, 64 Moss Road, Wishaw, ML2 8PU (“the Applicant”)

Mr Daniel McCall, 31 Branchal Road, Wishaw, ML2 8PD (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application dated 11 April 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 5 July 2019. The Applicant was represented by Mr Maher of TCH Law. The Respondent was represented by Mr Kane of Freelands solicitors.

The Applicant's representative, Mr Maher, moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 3 May 2018. The Respondent fell into rent arrears in November 2018 and there had been a continuous arrear since then. The rent arrears due at the date of the CMD stood at £2,300. The monthly rent was £350. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 28 February 2019.

3. The following documents were lodged alongside the application:
 - (A) Copy Private Residential Tenancy Agreement
 - (B) Copy Notice to Leave
 - (C) Proof of service of the Notice to Leave
 - (D) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (E) Rent statement
4. The Applicant's representative advised the Tribunal that a separate application seeking a payment order against the Respondent under Rule 111 of the Rules had been heard on 13 June 2019 and an order for payment granted against the Respondent in favour of the Applicant in respect of rent arrears had been granted in the sum of £1,950. Nothing had been paid since the application had been raised and the arrears had risen to £2,300. An updated rent statement was produced.
5. Mr Kane for the Respondent advised that the Respondent was currently detained in HMP Addiewell. The Respondent had indicated on 17 June 2019 that he wished to defend the proceedings. However, Mr Kane had received no further instructions from the Respondent since then confirming the legal basis of any proposed defence, other than a general claim that there had been repairing issues in the property. The alleged repairing issues were entirely unspecified. Mr Kane had written to the Respondent as well as the Respondent's partner seeking instructions to allow a defence to be proposed at the CMD. No instructions had been provided. Mr Kane moved for a continuation of the CMD to enable instructions to be obtained but also advising that it was also his intention to withdraw from acting in any event. Mr Kane was able to confirm to the Tribunal that no application had been raised by the Respondent at any stage seeking a Repairing Standard Enforcement Order. He was unaware as to or whether rent was being withheld on the basis that repairs were required, or that it was just simply not being paid. Mr Kane sought a continuation of the CMD.
6. Mr Maher opposed Mr Kane's motion on the basis that when the application had been submitted to the Tribunal in April, he had received a letter from Mr Kane on behalf of the Respondent indicating an intention by the Respondent to defend the application. He sought clarification as to the Respondent's substantive position and received no response. Any repairing issues are

denied by the Applicant. Mr Maher submitted that ground 12 of the 2016 Act had been established and an Order for repossession should accordingly be granted.

Findings in Fact

7. The Tribunal made the following findings in fact:
 - (A) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced 3 May 2018;
 - (B) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £350 per calendar month;
 - (C) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 28 February 2019;
 - (D) The Respondent has been in continuous arrears of rent since November 2018;
 - (E) The Respondent is in arrears of rent amounting to £2,300 at the date of the CMD.

Reasons for Decision

8. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD and further that the arrears of rent are an amount which is greater than the amount due to be paid as one month’s rent. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.
9. The Tribunal was not satisfied that a stateable defence had been put forward in relation to the application. Mr Kane had no instructions and the Respondent had had ample opportunity to provide him with such instructions as to enable any defence he considered he had, to be put forward on his behalf. The Tribunal considered that to allow a continuation of the CMD in light of the continued non-payment of rent, where the Respondent had failed to provide his solicitor with instructions when he had been given the opportunity to do so, would be prejudicial to the Applicant and cause him further financial distress. The Respondent’s agent’s motion to continue the CMD was accordingly refused.

Decision

10. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

5/7/19

Date