

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) Act 2016

Reference number: FTS/HPC/EV/21/1456

Re: Property at 15 Ann Street, Hamilton, ML3 0NE (“the Property”)

Parties:

Supersave Properties Limited, 23 Townhead Street, Hamilton, ML3 7BQ (“the applicants”)

Mr Lucian Ciurar and Mrs Veronica Muntean, both residing at 15 Ann Street, Hamilton, ML3 0NE (“the respondents”) Tribunal Members:

David Preston (Legal Member) and Ms Elaine Munroe (Ordinary 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 granted in favour of the applicant.

Background:

1. By application dated 27 July 2021 the applicant applied for an order for eviction and possession of the property on the basis of Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
2. The papers before the tribunal comprised: Tenancy Agreement dated 10 June 2019; rent statement covering the period 1 January 2019 to 27 June 2021 showing arrears of rent to that date of £5760; Notice to Leave dated 31 January 2021; Notification under section 11 of the Homelessness etc (Scotland) Act 2003; letters from the applicant to the respondents dated 17 January and 20 February 2021 regarding assistance for unpaid rent.
3. By Decision dated 6 August 2021, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal. A letter of Intimation dated 19 August 2021, with Notice of a Case Management Discussion (CMD) to be held by telephone on 21 September 2021 together with the case papers were served on the tenant by Sheriff Officers on 20 August 2021. The tribunal was provided with a copy of the Sheriff Officer’s Certificate of Citation of that date.

4. At the CMD on 21 September 2021 the tribunal was provided with a copy of an email dated 9 September 2021 from the respondents' representative; Mr Bruce Clayson, Team Leader, Hamilton Citizens Advice Bureau who advised that he was unable to attend due to holiday commitments. On that date, the CMD was continued until 9 November 2021 at 1000am.
5. Present on the telephone on 9 November 2021 was the applicant. There was no appearance by or on behalf of the respondents. At 1010 the tribunal clerk telephoned Mr Clayson ascertain whether either he or his clients intended to participate. He advised the clerk that he had not had any communication from the respondents since the last CMD.
6. The tribunal ascertained that a copy of the CMD note dated 21 September 2021 had been sent to the respondents' representative but not to the respondents. The tribunal considered the position carefully and on balance was satisfied that, having sent the CMD Note to the respondent's appointed representative, it was entitled to assume that the Note had been passed to his clients by way of notice of the adjourned CMD. The tribunal was conscious of its obligation to conduct proceedings fairly for both parties. The CMD had been continued from 21 September 2021 to allow the respondents an opportunity to fully instruct their representative but the chose not to communicate further with him. The applicant had received no rent since December 2020. The tribunal was also conscious of the fact that if the respondents' representative had not advised them of the adjourned CMD, they would have the opportunity to ask the tribunal to review its decision on receipt of these written reasons.
7. Accordingly, on balance the tribunal was content to proceed in the absence of the respondents

Case Management Discussion

8. Mr Ahmed advised that he was unaware whether the respondents were still in occupation of the property. He had heard nothing further from them to indicate that they had vacated. He advised that he had received no rent since December 2020 although he was looking for an order for arrears of rent until June 2021 the sum of £5760.

Reasons for Decision:

9. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
10. The tribunal noted that the email from the respondents' representative dated 9 September 2021 indicated that they did not intend to oppose the application for eviction. It accepted the information in the file and as provided by Mr Ahmed and was satisfied that the respondents were in arrears of rent for a period in excess of

three consecutive months in terms of ground 12 and determined to issue the order for eviction.

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.

David Preston

9 November 2021