



**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**

Chamber Ref: FTS/HPC/EV/19/2329

**Re: Property at Flat 3/3, 6 Cardon Square, Renfrew, Renfrewshire, PA4 8AP
("the Property")**

Parties:

**Mr Makarand Oak, Oak Cottage, 36 Napoleon Lane, London, SE18 4EF ("the
Applicant")**

**Mr James Duffy, Flat 3/3, 6 Cardon Square, Renfrew, Renfrewshire, PA4 8AP
("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 a Private Residential Tenancy Eviction Order be
made in favour of the Applicant.**

1. Background

- 1.1 This is an application under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), being an application for an eviction order. An eviction order was being sought on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), that being rent arrears.
- 1.2 The application was accompanied by copies of the tenancy agreement between the parties, a notice to leave with proof of postage and a rent statement.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 23 September 2019. The Applicant was represented by Ms Kirsty Morrison of TC Young Solicitors. The Respondent was neither present nor was he represented.
- 2.2 Ms Morrison confirmed that she wished the Case Management Discussion to proceed. The Tribunal noted that notice of the Case Management Discussion had been given to the Respondent in terms of the Rules and proceeded with the Case Management Discussion in terms of Rule 29 of the Rules. The application was heard in conjunction with application reference FTS/HPC/CV/19/2330.
- 2.3 Ms Morrison advised that the arrears began to accrue in December 2018. The Notice to Leave was dated 28 May 2019, at which time the Respondent had been in the equivalent of one month's arrears since December 2018. The rent due was £850.00 per calendar month. The Respondent was not in receipt of Housing Benefit or Universal Credit at the commencement of the tenancy agreement nor had the Applicant received any notification during the tenancy that an application for such a benefit had been made. The Respondent continued to occupy the Property and the arrears were currently £4250, with the last payment received on 20 May 2019.

3. Reasons for Decision

- 3.1 Section 51 of the 2016 Act states as follows:-

51 First-tier Tribunal's power to issue an eviction order

(1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

In the present application, an eviction order was sought on the basis of Ground 12 of Schedule 3 of the 2016 Act, which states as follows:-

Rent arrears

12(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 subparagraph (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.

3.2 The Tribunal proceeded on the basis of the submissions by Ms Morrison on behalf of the Applicant and on the papers before it. The Respondent had been in arrears equal to one month's rent, being £850.00 per month. The Respondent had been in arrears for in excess of three consecutive months as of the date of service of the Notice to Leave. The Notice to Leave had been validly served by recorded deliver and gave the appropriate 28 days' notice period. There was nothing before the Tribunal to suggest that the arrears were due to a delay or failure in payment of a relevant benefit. Accordingly, the Tribunal had no discretion and was required to issue an eviction order in terms of Section 51 of the 2016 Act. The Tribunal did not believe that a hearing required to be fixed.

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

23 SEPTEMBER 2019

Date