

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/18/2999

Re: Property at 6 Hunter Drive, Irvine, KA12 9AT ("the Property")

Parties:

**Mr Narendra Vaid, Mrs Patricia Vaid, 94 Dean Court Road, Rottingdean,
Brighton, BN2 7DJ ("the Applicant")**

Miss Karen Coogan, 6 Hunter Drive, Irvine, KA12 9AT ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

An application was received under rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking recovery of possession under a private residential tenancy by the applicant against the respondent for the property.

The application contained:-

- A copy of the tenancy agreement,
- a copy of the notice to leave
- copy emails
- copy letters of correspondence
- a copy of letter of authorisation
- rent account statement
- section 11 notice to local authority

Notice of the Hearing had been served on the respondent by sheriff officers on 20 December 2019.

The applicant's agent, Sharon McCourt appeared on behalf of the applicant. The respondent did not appear. I was aware however the respondent had contacted the tribunal office this morning to advise that she would not be attending today's hearing, as she indicated she had too many other things on, no explanation was given as to what these other things were, and there was no request by her to postpone today's hearing. She also advised the tribunal office that she had not been able to send over anything in writing prior to today's hearing.

I was satisfied that the Respondent had been served with notice of today's hearing, and that although she had advised she was not going to attend she had not provided any reason for me to adjourn today's hearing, in all the circumstances therefore, I was prepared proceed with today's case management discussion in her absence.

Case Management Discussion

The applicant's agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. She also confirmed that the notice to leave had been served by email and she showed me a screenshot of her client account system, with an entry dated 4 September 2018, showing email confirmation attaching the notice to leave.

She advised that the respondent was still residing in the property.

She advised that the current level of arrears were £1800, although the applicant would receive rent direct from Universal Credit in the next two weeks and this would reduce the sum, but only by the equivalent of one month's rent. She advised that there had been no rent payments for the first four months of the tenancy, the applicant had then applied to Universal Credit to have the rent payments paid direct to the applicant. Since August payments had been paid direct to the applicant. She advised that she was not aware of any delay or failure in payment regarding benefit payments due to the respondent in relation to her rent arrears.

She advised that she had attempted to speak to the respondent, however the respondent would either not discuss the rent arrears with her, or would say that she wanted to address them but then nothing would be done.

She advised that attempts had been made to get the respondent to address the rent arrears. The agent advised that the applicant had offered to allow an attempt to be made to have the respondent enter into a repayment, and the agent had referred the respondent to Shelter who contacted the debt agency Better of North Ayrshire, however the respondent had not responded to any contact from Better of North Ayrshire for support and they had therefore closed the case.

She advised that the respondent has been in rent arrears from the commencement of her tenancy until the present date. She advised that for a period of more than three months the respondent has been in rent arrears, which have totalled more than one months' rent.

She was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

I found the following facts established:-

There existed a private residential tenancy between the applicant and the respondent. It had commenced on 13 April 2018. The tenancy agreement had been signed by both parties on the 13 April 2018.

The tenancy was for the property 6 Hunter Drive Irvine.

The tenant was Karen Coogan. The landlord was Pat Vaid.

The rent for the property was £475 per calendar month payable in advance.

The notice to leave was addressed to the respondent. It contained the necessary information and provided the respondent with notice of why an eviction order was sought. It was dated 4 September 2018. It confirmed that proceedings would not be brought until 5 October 2018. It appeared to have been sent to the respondent by email on 4 September 2018. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months"

That rent arrears had been outstanding from the commencement of the tenancy.

That there were four months' rent arrears outstanding. These arrears had accrued from 13 April 2018 until 13 August 2018. These arrears were still outstanding. That the arrears totalled more than one month's rental due under the tenancy.

That the tenant was in receipt of Universal Credit that Universal Credit had been paid direct to the applicant since on around 13 August 2018.

The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

Section 51 of the 2016 Act provides me with a power to grant an order for eviction for a private residential tenancy, if I found that one of the grounds in schedule 3 of the Act applies.

The ground which the applicant seeks eviction under is ground 12 rent arrears.

Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."

Sub paragraph 2 provides that the tribunal must find that the grounds named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

I found that the terms of sub-paragraph 2 were met and accordingly I consider that I must find that the ground in sub paragraph 1 applies; and therefore I consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

I grant an order in favour of the applicant against the respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of 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.

Melanie Barbour

Legal Member/Chair

Date

15.1.19