

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 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/0177

**Re: Property at 13 Woodburn Loan, Dalkeith, EH22 2ES
 (“the Property”)**

Parties:

**Ms Jennifer Wilson, 1 Still Haugh, Fountainhall, Galashiels
 (“the Applicant”)**

**AM Lettings Limited, 11 South Street, Dalkeith, EH22 1AH
 (“the Applicant’s Representative”)**

**Mr Mark Black and Mrs Pauline Black, 13 Woodburn Loan, Dalkeith, EH22 2ES
 (“the Respondents”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied (i) that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; and (ii) that the facts required in paragraph 1(1) of Schedule 3 to the 2016 Act have been established by the

Applicant, namely that the Applicant intends to sell the let Property; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 17 January 2019 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months; and in terms of Ground 1 of Schedule 3 to the 2016 Act, namely that the Landlord intends to sell the let Property.

1.3. The Applicant's Representative lodged with the Application:

1.3.1. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 12 January 2018;

1.3.2. A copy rent statement for the period 11 January 2018 to 12 January 2019; and a copy rent statement for the period 11 January 2018 to 11 August 2018;

1.3.3. a copy of the Notice to Leave to the Respondents dated 22 August 2018, with proof of service by email on 22 August 2018;

1.3.4. Section 11 notice sent to the local authority.

1.4. On 18 January 2019 the tribunal's administration obtained the Title Sheet to the Property which shows that the Applicant has been the registered proprietor of the Property since 9 December 2015.

1.5. The Application was accepted for determination by a tribunal on 28 January 2019.

- 1.6. On 18 February 2019 the Applicant authorised the Applicant's Representative to act on her behalf and asked for all correspondence to be sent to Jackie Barr at the Applicant's Representative.
- 1.7. Both parties were notified by letters dated 28 February 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1400h on 22 March 2019 at George House, 126 George Street, Edinburgh. The Respondent was invited to make written representations in response to the Application by 22 March 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
- 1.8. Service of the Application documentation and notification of the date, time and place of the CMD was served on the Respondents by Sheriff Officers on 28 February 2019, by depositing through the letterbox at the Property.
- 1.9. On 3 March 2019, the tribunal issued Directions to the Applicant and Applicant's representative requiring them to comply with the orders by 14 March 2019.
- 1.10. On 8 March 2019, the Applicant's representative sent an email to the tribunal's administration with copies of documents already submitted (Notice to leave to the Respondents dated 22 August 2018, rent statement to 11 August 2018, email to Respondents 22 August 2018), together with additional documents:
- 1.10.1. an updated rent statement to 12 February 2019,
 - 1.10.2. email to Respondents dated 7 March 2019
 - 1.10.3. Letter from McDougall McQueen Solicitors and Estate Agents to the Applicant dated 17 January 2019 confirming the Applicant's instructions to market the Property for sale upon obtaining vacant possession, and
 - 1.10.4. photographs (undated) of hand delivery of a letter to the Respondents at a property.

2. CMD: 22 March 2019 at 1400h at George House, 126 George Street, Edinburgh

- 2.1. Ms Barr from the Applicant's Representative attended the CMD on behalf of the Applicant.

- 2.2. The Respondents did not attend the CMD and no contact was made with the tribunal.
- 2.3. The tribunal, being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with, proceeded with the Application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.4. In relation to the three rent statements which had been produced, Ms Barr confirmed that the rent statement to 11 August 2018, which showed arrears was attached to the Notice to Leave dated 22 August 2018 and had been submitted with the Application paperwork as a single document. The rent statement to 12 January 2019 showed the rent arrears of £1116.00 as at the date of the Application. The rent statement to 12 February 2019 showed the rent arrears of £1816.00 as at that date.
- 2.5. Ms Barr stated that the updated rent arrears figure to 22 March 2019 is £2516.00. She calculated this with reference to the additional rent falling due on 12 March 2019. There have been no payments from the Respondents since the Application was made.
- 2.6. There have been no submissions or evidence by or on behalf of the Respondents to the effect that the arrears are wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 2.7. Ms Barr stated that both Respondents and their two adult daughters are all in employment. The last contact the Applicant's Representative received from the Respondents was from Mrs Black stating that she was on her way to the bank but no payment was made. The Respondents have been in arrears of rent throughout the tenancy, including the last three months.
- 2.8. The Applicant's Representative has sent a Section 11 Notice to the City of Edinburgh Council.
- 2.9. In relation to Ground 1, the Applicant's Representative referred to the letter of 17 January 2019 confirming the Applicant's instructions to sell the Property. In relation to the arrangements to market the Property for sale, Ms Barr confirmed that she has had to cancel the sales team and the surveyor from going to the Property to take photographs and prepare the schedule; and to produce the Home Report, because the Applicants are having problems getting into the Property as a result of the Respondents. The Respondent, Mr Black, works constant night shift and is in bed during the day. Ms Barr

intends to instruct the Hone report once vacant possession is obtained. Ms Barr confirmed that because the Home Report has not yet been carried out she does not know the market value but she stated that the Applicant intends to sell the Property or market it for sale for market value within three months of obtaining vacant possession.

3. The tribunal makes the following findings-in-fact:

- 3.1. The Proprietor of the Property is the Applicant.
- 3.2. There is a Private Residential Tenancy between the Applicant and the Respondents for the Property dated 12 January 2018.
- 3.3. The start date for the tenancy was 12 January 2018.
- 3.4. The rent payable is £700.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 12th of each month.
- 3.5. The rent has remained at £700.00 per calendar month from 23 March 2018 to 22 March 2019.
- 3.6. As at 22 March 2019 the Respondents are in arrears of rent of £2516.00, which is greater than one months' rent under the tenancy.
- 3.7. As at 22 March 2019, the Respondents have been in arrears of rent for a continuous period up to and including 22 March 2019, of three or more consecutive months.
- 3.8. The Notice to Leave which was served on the Respondents includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act; and a rent statement to 11 August 2018 was attached to the Notice to Leave.
- 3.9. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.
- 3.10. The Applicant, as proprietor of the Property, is entitled to sell the Property.
- 3.11. The Applicant intends to market the Property for sale for market value within three months of obtaining vacant possession of the Property.

4. Findings in fact and law

4.1. Because the tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 Act have been established, the tribunal must find that the Ground named in para 12(1) of Schedule 3 of the 2016 Act applies, namely that the Respondent has been in rent arrears for three or more consecutive months.

4.2. Because the tribunal is satisfied that the facts required in paragraph 1(2) of Schedule 3 to the 2016 Act have been established, the tribunal must find that the Ground named in para 1(1) applies, namely that the Applicant intends to sell the let Property.

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.

S Tanner

Susanne L. M. Tanner Q.C.
Legal Member/Chair

22 March 2019