



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of Private Housing
(Tenancies) (Scotland) Act**

Chamber Ref: FTS/HPC/EV/19/0950

Re: Property at 21 Mearns Road, Motherwell, ML1 3LF (“the Property”)

Parties:

Ms Linda Campbell, Flat 0/1, 135 Baillieston Road, Glasgow, G32 0TG (“the Applicant”)

Mr Barry Bamford, 21 Mearns Road, Motherwell, ML1 3LF (“the Respondent”)

Tribunal Members:

Colin Dunipace (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order should be made in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

This application was made for eviction/possession under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The initial application was dated 19 March 2019.

In support of the application was lodged: a copy of the tenancy agreement; copy Notice to Leave with associated Execution of Service; letter to Local Authority with proof of service and permission latter.

The matter had initially called as a Case Management Discussion at Glasgow on 16 May 2019. At that time the applicant had been represented by Ms McGuire of Jewel Homes. The respondent was not present at this Discussion. Given that an issue had been raised in relation as to whether the respondent’s arrears might have been wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit, a full Hearing was assigned for 24 June 2019 in Glasgow.

The matter accordingly called for a full hearing in Glasgow Tribunals Centre on 24 June 2019. The applicant was not present at the Hearing but was represented by Ms McGuire of Jewel Homes. The respondent was personally present at the hearing but was not represented.

On behalf of the applicant Ms McGuire stated that the up to date position was that since February 2019, that the Applicant had been receiving payments from DWP in relation to rent in the sum of £350.01 per month. To date there had been payments received in February, March, April, May and June in the aforementioned amount. Ms McGuire reminded the Tribunal that the rental due in respect of the property was in the sum of £450 per month, and that despite assurances, the respondent had not taken any steps to address the question of the shortfall, or indeed to address the question of the outstanding arrears, which at the time of the Hearing amounted to £2439.96. In these circumstances an order was sought on behalf of the applicant.

The respondent stated that he wished to remain in the property although there had been issues with it. He advised that he was a self-employed handyman, but that due to certain mental health issues that he had been unable to work for the past six months. He hoped though to be in a position to return to work in the near future. The respondent advised that it had always been his intention to address the issues of the outstanding arrears, but that due to the fact that he had only been receiving the sum of £250 per month in relation to his Universal Credit payments, that he had been unable to do. He indicated that he hoped to be able to address these arrears when he returned to work.

In relation to the benefit position the respondent confirmed that the payment of £350.01 was all that he was entitled to receive and that he had been informed by the DWP that he would not be entitled to receive any backdated payments from them. The respondent was unable to confirm exact dates when he became unfit for work, and was also unable to confirm why he had allowed the position in relation to arrears to have accrued to the extent that it had prior to becoming unfit to work.

Findings in Fact

1. The parties entered into a Scottish Residential Tenancy Agreement in relation to the subjects at 21 Mearns Road, Motherwell on 10 August 2018. In terms of this Agreement the rental due in respect of the property was in the sum of £450 per month.
2. The respondent made payments of rent in the sum of £350 on 10 August 2018, and thereafter made payments on £80 on 28 September 2018, £110 on 29 November 2018, and £100 on 10 December 2018. Whilst the respondent was initially in employment, due to illness required to make a claim for Universal Credit, and since 22 February 2019 payments have been made to the applicant in respect of these benefits in the sum of £350.01 per month. The respondent is not entitled to any further backdated payments.
3. The arrears due in respect of the property at the present date are in the sum of £2439.96

Findings in Fact and Law

1. The applicant sought an order in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. Reference was made to Ground 12 of Schedule 3 to the aforementioned Act which stated in relation to rent arrears that that :

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 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 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.

2. Having considered the terms of this section the Tribunal was satisfied that the factual position had been established to the requisite standard and further that this was a mandatory ground of eviction . It was not the case that the terms of section 12(2) (b) had been engaged. The Tribunal was accordingly satisfied that the Order should properly be made.

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 Chair. *U*

24/6/19
Date