

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(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/0041

Re: Property at 9i Wallacewell Road, Kilmarnock, KA1 4LY (“the Property”)

Parties:

Easton Property Auchans Limited, 2 Newfield Drive, Dundonald, Kilmarnock, KA2 9EW (“the Applicant”)

Ms Kiarra Russell, 9i Wallacewell Road, Kilmarnock, KA1 4LY (“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 an eviction order should be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 109 whereby the Applicant seeks an eviction order in respect of a Private Residential Tenancy between the parties. The Application was accompanied by a copy of the written tenancy agreement, a Notice to Leave dated 4 October 2018, Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a statement of the rent account.

1.2 The Applicant seeks an eviction order on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).

2. The Case Management Discussion

2.1 The Case Management Discussion took place on the 22 February 2019 at North West Kilmarnock Area Centre, Kilmarnock. The Applicant was

represented by Mr Steven Easton and Ms Lynn Tone of Easton Property Auchans Limited. The Respondent was neither present nor represented.

2.2 The Tribunal noted that notice of the Case Management Discussion had been given to the Respondent by way of Sheriff Officer. Mr Easton confirmed that the application was insisted upon and that they wished the Case Management Discussion to proceed in the Respondent's absence. In the absence of any submissions from the Respondent or explanation for her absence, the Tribunal elected to proceed with the Case Management Discussion.

2.3 Mr Easton advised that the rent arrears were currently £3650.00. He advised that the Respondent had been in arrears since the commencement of the tenancy agreement, which began on 23 March 2018. A further payment of rent was to fall due tomorrow.

3. Reasons For Decision

3.1 The power of the Tribunal to grant an eviction order is contained with Section 51 of the 2016 Act. Section 51 states:-

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.

The Tribunal is therefore to issue an eviction order if one of the eviction grounds applies. In the present application, the Applicant relied upon Ground 12 of Schedule 3 of the 2016 Act. Ground 12 states:-

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.

- (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 In the present application, the Respondent was required, in terms of the written tenancy agreement, to make payment of rent of £400.00 per calendar month. The Respondent had been in arrears of rent since the commencement of the tenancy agreement. The balance as at the date of the making of the application was £3250.00. The balance as at the date of the Case Management Discussion was £3650.00. In terms of Ground 12(2) of Schedule 3 of the 2016 Act, the Tribunal was required to find that the Ground applies and to issue an eviction order.

3.3 In the absence of any written representations from the Respondent or her lack of attendance at the Case Management Discussion, there was nothing before the Tribunal to suggest that the arrears of rent were wholly or partly a consequence of a delay or failure in payment of a relevant benefit.

3.4 Section 52(3) of the 2016 requires that the application was accompanied by a copy of a Notice to Leave given to a tenant. The present application was accompanied by a copy of a valid Notice to Leave and confirmation of the date it was emailed to the Respondent, being the 4 October 2018.

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.

[Redacted Signature]

Legal Member/Chair

22 FEBRUARY 2019
Date