



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 (hereinafter referred to as the Act)

Chamber Ref: FTS/HPC/EV/19/0367

Re: Property at Lower Flat, 191 Edward Street, Dunoon, Argyll, PA23 7PJ (“the Property”)

Parties:

Mr Graham Campbell, 9 Kilbride Road, Dunoon, Argyll, PA23 7LL (“the Applicant”)

Mr Callum McCreadie, Lower Flat, 191 Edward Street, Dunoon, Argyll, PA23 7PJ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied 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 months’ up to and including that day; that rent arrears were not wholly or partly a consequence of delay or failure in payment of a relevant benefit and made an order for eviction in terms of S51 of the Act

- **Background**

This was an application made by the Applicant’s representative Mr Ranalli for an order for eviction of the Respondent from the Property due to arrears of rent having accrued for over 3 consecutive months in terms of S51 and Schedule 3 of the Act dated 30th January 2019.

Along with the application there was lodged a copy of the Notice to Leave dated 9th November 2018 and copy bank statements showing sums paid towards rent on 28th June, 10th August and 8th October. There was no payment on 28th July or subsequently after 8th October.

The Applicant also lodged a copy of the Section 11 notice to the Local Authority dated 29th January 2019.

The Application was accepted by the Tribunal on 25th February and the application and accompanying documents including notice that a case management discussion would be held at Dunoon Sheriff Court on 4th April at 10am were served on the Respondent by Sheriff officer by letter box service on 15th March 2019. The Respondent was invited to make written representations in response to the Application by 29th March. No written representations have been received. Both parties were advised that the Tribunal may do anything at a case management discussion that it may do at a hearing which may involve making or refusing an eviction order and that this may happen even if a party does not attend provide the tribunal considers it has sufficient information before it to do so and the procedure is fair.

The Tribunal made directions on 25th March requiring the Applicant to produce a copy of the signed tenancy agreement and proof of service of the Notice to Leave dated 9th November 2018. The Applicant sent a copy of the signed tenancy agreement and copy of the e-mail dated 9th November 2018 serving the Notice to Leave to the Tribunal on 29th March.

- The Case Management Discussion

At the CMD the Respondent did not attend but the Applicant was present along with his representative Mr Ranalli his solicitor.

The Tribunal explained the purpose of the CMD and confirmed that as it was satisfied due notice of the hearing had been given to the Respondent it would be fair to continue in his absence. The Tribunal clarified with the Applicant that the Respondent had received a copy of the tenancy agreement prior to signing it and also after it was signed. The Applicant also confirmed that the Respondent had acknowledged his notice to leave which had been sent by e-mail delivery on 9th November 2018 because he responded by with an e-mail saying the notice to leave was full of false information and he was only £120 behind because the Landlord had his deposit as well. The Applicant confirmed the deposit is held in a deposit scheme.

The Applicant also advised that the Respondent is to his best knowledge self – employed and not in receipt or waiting for benefits and the rent arrears now amount to £2640 as no payment has been made towards the rent since October 2018.

- Findings in Fact

1. The Proprietor of the Property is the Applicant.
2. There is a private residential tenancy between the Applicant and the Respondent dated 21st November 2018.

3. The Parties agreed in the tenancy agreement that all communications made under the Act could be served by e-mail.
4. The Start date for the tenancy was 28th June 2018 and the rent agreed was £420 payable on 28th date of each month in advance.
5. As at 4th April 2019 the arrears of rent are £2640, which is greater than one months' rent under the tenancy.
6. As at 4th April 2019 the Respondents are in arrears of rent for a continuous period of three or more months.
7. The Notice to Leave which was served on the Respondent by e-mail and recorded delivery includes Notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the Act.
8. The rent arrears are not a consequence of delay or failure in payment of the Respondent's benefits.

- Reasons for Decision

The Tribunal is satisfied from the evidence produced that the rent is in arrears of at least over one months' rent and has been for over 3 consecutive months ; that as the Respondent is self- employed and there were no representations that failure to pay the rent was caused by delay or failure in payment of benefits, the requirements of paragraph 12 (2) of Schedule 3 of the Act are met and therefor this ground of eviction must apply and in terms of S51 of the Act the Tribunal is to issue an eviction order.

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.

J Todd

Legal Member/Chair

Date

4/4/19

***Insert or Delete as required**