

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 Sections 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/0503

Re: Property at 7 Minto Place, Hawick TD9 9JL (“the Property”)

Parties:

Ms Carol Phillips 1 Heronhill Crescent, Hawick, TD9 9RS (“the Applicant”), and

Messrs. Bannerman Burke Law 28 High Street, Hawick, TD9 9BY (“the Applicant’s Representative”) and

Mr Stuart Gallagher 7 Minto Place, Hawick, TD9 9JL (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

A Khan- Ordinary Member

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant an eviction order.

Background

1. This Application was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant’s Representative had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave (“NTL”) served on the Respondent and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to Scottish Borders

Council as well as the Applicant's Affidavit regarding her service of the NTL and copies of the Applicant's Representative's correspondence with the Respondent in terms of the pre-action requirements. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. Sheriff Officers served copies of the Application and notified the Respondent of the Case Management Discussion ("CMD"), referred to below, on 10th May 2022 and the Tribunal have received the relevant Certificate of Service.

Case Management Discussion 14th June 2022

4. A CMD proceeded remotely by telephone conference call at 2pm today. The Applicant and her Representative's Mr S Robertson attended. The Respondent did not attend and was not represented.
5. Mr Robertson stated that the Respondent was in arrears of rent in the sum of £6171.18, having not made any rental payments since April 2020. He submitted that the Applicant had complied with the pre-action requirements by corresponding with the Respondent. Mr Robertson stated that the Respondent had called him in February 2022 to ask for the Applicant's address to assist with papers that the Respondent was completing, but had not otherwise engaged in any discussions to try to resolve the issue of the arrears. Mr Robertson said that the Applicant was adversely affected, financially, as a result of the increasing rent arrears. He stated that the Applicant was reliant on rental monies for the Property as part of her retirement income. He also submitted that Ms Philips' health was suffering as a consequence of her worrying about how to resolve this matter. Ms Philips said that the Respondent had not replied to her direct communications regarding the increasing rent arrears. She said that she had been in hospital for some 6 months in 2020 and this, and the continuing health pandemic, had delayed her in taking formal action to try to resolve the matter. Mr Robertson asked that the eviction order be granted as the ground for eviction, that more than three consecutive months of rent arrears is owing, is satisfied and it is reasonable to do so.

Findings in Fact and Law and Reasons for Decision

6. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
7. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
8. The Tribunal considered all of the Application papers, including the PRT and Notice to Leave lodged by the Applicant's Representative, as well as the

statements and submissions of the Applicant and her Representative's Mr Robertson.

9. The total arrears owing, at present, are stated by the Applicant to be in the sum of £6171.18, which sum represents arrears of rent of more than three consecutive months.
10. The Applicant, through her Representative, has complied with the pre-action requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020.
11. The Respondent did not enter into any discussions with the Applicant or her Representative to resolve the issue of rent arrears and has not engaged with the Tribunal to contradict the Applicant's evidence regarding the issue of the rent arrears, compliance with the pre-action requirements and the reasonableness or otherwise of a grant of an eviction order.
12. Having considered all of the available evidence and submissions, the Tribunal finds in fact that the Respondent had been in rent arrears for three or more consecutive months at the date of the Application, and is in arrears of £6171.18 at the present date. Accordingly, the Tribunal finds in law that the ground in Schedule 3 (12) (1) of the 2016 Act is met. The Tribunal also finds that it is reasonable that an eviction order be granted, in particular given the considerable sum of rent arrears owing, the impact of this on the Applicant's health and finances and the Respondent's lack of engagement with the Applicant's Representative and the Tribunal.

Decision

13. The Tribunal therefore makes an eviction order as sought in this Application.

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.

G McWilliams

14th June 2022

Legal Member

Date

