



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/0243

Re: Property at Balmuirfield Cottage, Harestane Road, Dundee, DD3 0NU (“the Property”)

Parties:

Raynor Holdings Limited, Craigmill House, Bridgefoot, Dundee, DD3 0PH (“the Applicant”)

Mrs Mandy Sweeney, Balmuirfield Cottage, Harestane Road, Dundee, DD3 0NU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an eviction order should be granted.

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave with Sheriff Officer certificate of service, rent statement and section 11 notice were lodged in support of the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer on 27 March 2023. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 17 May 2023 and that they were required to participate.**
- 3. Prior to the CMD the Applicant lodged an updated rent statement and notified the Tribunal that a neighbour had been in contact to say that the property appeared to have been abandoned.**

4. The CMD took place at 10am on 17 May 2023. The Applicant was represented by Ms Kelly, Managing Director. The Respondent did not participate.

The CMD

5. Ms Kelly told the Tribunal that the property appears to have been abandoned at the beginning of April 2023. The neighbour reported this and said that Sheriff Officers and debt collectors have been to his property looking for the Respondent. Ms Kelly has also been to the property. The blinds are down so it is difficult to see through the windows, but the house appears to have been ransacked. There is rubbish in the garden and the bins are full of rubbish. A letter was sent to the Respondent at the property and to her hairdressing business to ask if she had moved out, but there has been no response. Ms Kelly has also phoned the salon but the Respondent refuses to speak to her. She has not returned the keys or confirmed if she has vacated the property.
6. In response to questions from the Tribunal, Ms Kelly said that the sum outstanding is £8800, as shown on the updated rent statement. After the Scottish Government announced an eviction ban, the Respondent stopped paying her rent and has made no payments since September 2022. The deposit paid at the start of the tenancy is still with the deposit scheme as the tenancy has not ended. Ms Kelly told the Tribunal that the Respondent has occupied the property for 6 years. Her husband was the tenant at the beginning and there were 2 children. After they separated the Applicant agreed to let the property to the Respondent. Since then, a new partner has moved in and there is a third child of about 2 years of age. There were no tenancy related issues until the Respondent stopped paying rent. The Respondent has her own hairdressing business and employs staff. There is no evidence that she cannot afford to pay her rent and is understood to have been on holiday.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The Respondent is due to pay rent at the rate of £1100 per month.
10. The Respondent has been in arrears of rent since September 2022. There have been no payments to the rent account since 26 September 2022.
11. The Respondent currently owes the sum of £8800 in unpaid rent.
12. The Applicant served a Notice to leave on the Respondent on 23 December 2022.

13. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
14. The Respondent previously occupied the property with her partner and three children. The Respondent is not currently living at the property.
15. The Applicant has endeavoured to contact the Respondent to discuss the rent arrears and her occupation of the property but has been unsuccessful.
16. The Respondent has not advised the Applicant if she has vacated the property or returned the keys.

Reasons for Decision

17. The application was submitted with a Notice to Leave dated 23 December 2022 together with Sheriff Officer certificate of service which establishes that the Notice was served personally on the Respondent on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 21 January 2023.
18. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
19. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
20. Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) 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, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit.

The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.

21. The Tribunal is satisfied that the Respondent currently owes the sum of £8800 and that she was in arrears of rent for three or more consecutive months both at the date of service of the Notice to leave and the CMD.

22. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

(a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The application was accompanied by a letter dated 1 November 2022 which provided information in compliance with the protocol.

(b) The Tribunal is also satisfied that the arrears do not appear to be attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information to the Tribunal regarding her circumstances. However, the Applicant was able to advise the Tribunal that the Respondent has a hairdressing business and employs staff. There is no evidence to suggest that she is entitled to, or has made a claim for, a relevant benefit.

(c) The Respondent has failed to respond to attempts by the Applicant to contact her regarding the arrears. She has offered no explanation for non-payment.

(d) The Respondent and her family are not currently occupying the property. The Applicant does not have a current address for them. As she has failed to respond to correspondence, it is not clear whether the absence from the property is permanent or temporary.

(e) The property has been left in poor condition by the Respondent.

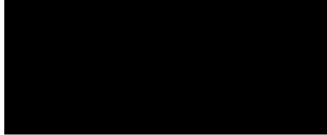
23. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 22, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

24. The Tribunal determines that an eviction order should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

17 May 2023