

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

Chamber Ref: FTS/HPC/EV/23/1311

Re: Property at Flat 2/L, 11 Park Avenue, Dundee, DD4 6PN (“the Property”)

Parties:

James Murray Calder, 28 Mercer Street, Innerleithen, EH44 6QB (“the Applicant”) and

Rockford Properties, 5 Castle Street, Dundee, DD1 3AQ (“the Applicant’s Representative”) and

Mr Darren Gordon, Flat 2/L, 11 Park Avenue, Dundee, DD4 6PN (“the First Respondent”) and

Mr Robert Gordon, Flat 2/L, 11 Park Avenue, Dundee, DD4 6PN (“the Second Respondent”)

Tribunal Members:

G McWilliams- Legal Member

S Brydon - Ordinary Member

Decision in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

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 served on the Respondents and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to Dundee City Council. 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. The Application papers and Guidance Notes had been validly served upon the Respondents by Sheriff Officers on 25th May 2023.
4. The Respondents have not lodged any representations in respect of the Application.

Case Management Discussion

5. A Case Management Discussion ("CMD") proceeded by remote teleconference call on 27th June 2023. The Applicant's Representative's Ms H Young attended. The Respondents did not attend and were not represented.
6. Ms Young referred to the further Rent Statement which she had sent to the Tribunal's office on 22nd June and submitted that the Respondents were now in rent arrears of £5,935.00, at 1st June 2023. She stated that the Respondents had not paid any rent since 7th February 2022. Ms Young said that the Applicant is elderly and resides in a care home. Ms Young said that her company, Rockford Properties, had begun dealing with the letting and management of the Property after the commencement of the PRT in 2020 as the Applicant was unable to deal with matters himself. Ms Young submitted that the Applicant had obtained a payment order, in respect of then outstanding rent of £4,435.00, from the Tribunal on 27th February 2023. She said that Sheriff Officers had been unable to recover any monies from the Respondents in respect of the payment order. She stated that she understood that there was no outstanding mortgage in relation to the Property. Ms Young submitted that she had sent e-mails to the Respondents, and attended at the Property in person in order to try to arrange a payment plan in respect ongoing rent and rent arrears due. Ms Young said that the Respondents shouted and swore at her and informed her that they did not intend to pay any rent. Ms Young also stated that she had attempted to encourage the Respondents to claim benefits to help with the rent payments. She said that she had submitted an application for Universal Credit direct payments of rent, but this was unsuccessful. She submitted that the Respondents are seeking that an eviction order is granted so that they can obtain alternative Local Authority accommodation. Ms Young stated that, in the circumstances, she considered that her company had no option other than to lodge the Application for an eviction order. She submitted that given that no rent has been paid by the Respondents since February 2022 and as all attempts to agree arrangements for payment of rent and arrears had been unsuccessful, it was fair and reasonable for an eviction order to be granted.

Findings in Fact and Law and Reasons for Decision

7. 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.
8. 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.
9. The Tribunal considered all of the Application papers, including the PRT, Notice to Leave and Rent Statements lodged by the Applicant, as well as the submission of the Applicant’s Representative’s Ms Young.
10. The Respondents had not lodged representations with the Tribunal regarding the reasonableness of the grant of an eviction order or attended the CMD to provide any evidence, and/or make any submission, to oppose, and contradict the basis for the order sought by the Applicant.
11. Having considered all of the evidence, as well as the submissions of Ms Young, the Tribunal finds in fact that the Respondents have been in rent arrears for three or more consecutive months at the date of the Application, and are in arrears of £5,935.00 at the present date. The Tribunal finds in law that the ground in Schedule 3 (12) (1) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

Decision

12. 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.



Legal Member

27th June 2023

Date