

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 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/2232

**Re: Property at 112 Deanburn, Penicuik, EH26 0HZ
 (“the Property”)**

Parties:

**Ms Carolyn Duncan, 129 Bosque De Law Lomas, 17 calle Malvinas, Alicante, 01389, Spain
 (“the Applicant”)**

**TC Young Solicitors, 7 West George Street, Glasgow, G2 1BA
 (“Applicant’s Representative”)**

**Mr Darren Baxter and Ms Meghan Beasley, 112 Deanburn, Penicuik, Eh26 0HZ
 (“the Respondents”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (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 Respondents were in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 17 July 2019 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicant seeks the Respondents' eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondents have been in rent arrears for three or more consecutive months.

1.3. The Applicant lodged with the Application:

1.3.1. A paper apart headed "Section 5: Possession Eviction grounds";

1.3.2. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 25 June 2018;

1.3.3. A rent statement for the period 25 June 2018 to 31 July 2019;

1.3.4. a copy of the Notice to Leave to the Respondents dated 5 June 2019, with proof of service on both Respondents by email on 5 June 2019;

1.3.5. Section 11 notice sent to the local authority, with proof of service.

1.4. On 1 August 2019, the Application was accepted for determination by the tribunal. Both parties were notified by letters dated 9 August 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1000h on 18 September 2019 at Riverside House, 2nd floor, 502 Gorgie Road, Edinburgh, EH11 3AF. The Respondents were invited to make written representations in response to the Application by 31 August 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. Service was effected on the Respondents on 9 August 2019.

1.5. The Respondents did not submit any representations or make any contact with the tribunal.

2. CMD: 1000h on 18 September 2019, Riverside House, 2nd floor, 502 Gorgie Road, Edinburgh, EH11 3AF

2.1. Ms Nicola Caldwell, Solicitor, from the Applicant's Representative, attended the CMD on behalf of the Applicant.

2.2. The Respondents did not attend the CMD or make any contact with the tribunal.

2.3. The tribunal, being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with, proceeded with the Application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

2.4. Ms Caldwell lodged a further updated rent statement to 30 September 2019, with the consent of the tribunal. It shows total rent arrears of £4,500.00, which includes the rent of £750.00 due on 1 September 2019.

2.5. There have been no submissions or evidence by or on behalf of the Respondents to the effect that the arrears are wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

2.6. Ms Caldwell submitted that in relation to the rent due on 1 September 2019, the full rent was due on that date and therefore represents the rent arrears as at 18 September 2019.

3. The tribunal makes the following findings-in-fact:

3.1. The Applicant is proprietor of the Property.

3.2. There is a Private Residential Tenancy between the Applicant and the Respondents for the Property dated 25 June 2018.

3.3. The start date for the tenancy was 25 June 2018.

3.4. The rent payable is £750.00 per calendar month, payable monthly on or before 1st of each month.

3.5. As at 18 September 2019 the Respondents are in arrears of rent of £4,500.00 which is greater than one months' rent under the tenancy.

3.6. As at 18 September 2019, the Respondents have been in arrears of rent for a continuous period up to and including 18 September 2019, of three or more consecutive months.

3.7. The Notice to Leave which was served on the Respondents includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.

3.8. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.

4. Findings in fact and law

4.1. Because the tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 Act have been established, the tribunal must find that the Ground named in para 12(1) of Schedule 3 of the 2016 Act applies, namely that the Respondents have been in rent arrears for three or more consecutive months.

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.

18 September 2019

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**