

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/18/2759

Re: Property at 8 St Stephens, Stoneykirk, Stranraer, DG9 9DQ (“the Property”)

Parties:

Mr William Birkett and Miss Tracey Waugh, 9 Bowling Green Road, Sandhead, Stranraer, DG9 9TW (“the Applicants”)

Ms Agnes Adair or McIntyre, 8 St Stephens, Stoneykirk, Stranraer, DG9 9DQ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the applicant against the Respondent for the Property.

The application contained:-

- a copy of the tenancy agreement,
- a copy of the notice to leave with recorded delivery receipt
- a copy section 19 Notice
- a copy of text messages
- a copy of the rent account and copy bank statement
- a written statement by application dated 14 January 2019
- an updated rent account

- a copy letter from Dumfries and Galloway Council dated 25 July 2018
- a copy letter from Dumfries and Galloway Council dated 25 January 2019

The Applicants' solicitor, Ms Richardson appeared with her clients.

Notice of the Hearing had been served on the Respondent by recorded delivery mail on 18 January 2019. Notice had also been given to the Respondent's solicitor at the first case management discussion which had been held on 10 January 2019.

The Respondent and her solicitor did not appear at today's hearing. I was advised by the solicitor for the Applicants that the solicitor for the Respondent had withdrawn from acting. The Tribunal had not however received any formal notification that he had withdrawn from acting. The Tribunal had also not received any notification that the Respondent or her solicitor would not be able to attend.

The Tribunal was satisfied that the Respondent and her solicitor had been served with notice of today's hearing and, in all the circumstances, we were therefore prepared to proceed with today's hearing in her absence.

A case management discussion had previously taken place on 10 January 2019; reference to the terms of that note is made.

Hearing

The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. She also confirmed that the notice to leave had been served by recorded delivery.

She advised that the Respondent was still residing in the property, albeit she said that the Respondent's solicitor had emailed her on 5 February 2019 advising that the Respondent intended to vacate the property on 6 February 2019. She advised that she understood however that the Respondent was still residing in the property.

She advised that although the notice to leave sought eviction under two grounds, breach of tenancy agreement and rent arrears, she was no longer insisting on eviction for breach of tenancy agreement.

She advised that the current level of arrears were £4,360. She advised that there had been no rent payments since April 2018.

She understood that the Respondent was in receipt of housing benefit from a discussion she had previously had with Dumfries and Galloway Council in around November 2018. She advised that she was not aware of any delay or failure in payment regarding benefit payments due to the Respondent in relation to her rent arrears.

The Applicants advised that they had no contact whatsoever with the Respondent anymore.

The Applicants' agent advised that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears total more than one months' rent.

She advised therefore that her clients were seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

The Tribunal found the following facts established:-

There existed a private residential tenancy between the Applicants and the Respondent. It had commenced on 12 December 2017. The tenancy agreement had been signed by both parties on 1 December 2017.

The tenancy was for the property 8 St Stephens, Stoneykirk, Stranraer.

The tenant was Agnes Adair or McIntyre. The landlords were William Birkett and Tracey Waugh.

The rent for the property was £430 per calendar month.

The notice to leave was addressed to the Respondent. It contained the necessary information and provided the Respondent with notice of why an eviction order was sought. It was dated 5 September 2018. It confirmed that proceedings would not be brought until 4 October 2018. It had been sent to the Respondent by recorded delivery on 5 September 2018. The grounds in the notice to leave were grounds 11 "breach of tenancy agreement" and 12 "you are in rent arrears over three consecutive months".

That rent arrears had been outstanding since April 2018.

There were at least ten months' rent arrears outstanding as at today's hearing.

The rent arrears had accrued from 12 April 2018. There had been no rental payments since then. The arrears were still outstanding. The arrears totalled more than one month's rental due under the tenancy.

That the Respondent appeared to be in receipt of housing benefit.

The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if we found that one of the grounds in schedule 3 of the Act applies.

The ground which the applicant seeks eviction under is ground 12 rent arrears.

Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."

Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal found that the terms of sub-paragraph 2 were met and accordingly we consider that we must find that the ground in sub paragraph 1 applies; and therefore consider that we are required to grant an eviction order in terms of ground 12 rent arrears.

Decision

The Tribunal grants an order in favour of the Applicants against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

M Barbour

Legal Member/Chair

8. 2. 19

Date