

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/18/3072

Re: Property at 50 (G/2) Provost Road, Dundee, DD3 8AH (“the Property”)

Parties:

Sale Developments Ltd, West Burn House, Nr Dunning, Perthshire, PH2 0QY (“the Applicant”)

Mr Jamie Maxwell, 50 (G/2) Provost Road, Dundee, DD3 8AH (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for an eviction order dated 6th November 2018 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property from the Respondent, and provided with its application copies of the private residential tenancy agreement, notice to leave with execution of service, section 11 notice and rent arrears statement.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 6th March 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 28th March 2019 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. The Applicant did not appear, but was represented by Mr Baxter, Housing Manager. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

I was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 13th September 2018 narrated that rent arrears with late payment penalties incurred at that time amounted to £2,208.00, accumulated over seven months under the private residential tenancy agreement between the parties.

The Applicant had produced a rent arrears statement to the Tribunal. Rental of £360.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement.

Prior to the notice to leave of 13rd September 2018, the rent arrears statement disclosed that the Respondent had made no rental payments since the start date of the lease on 27th February 2018. Mr Baxter advised that as of today's date, no rental has been paid under the lease agreement by the Respondent for a period of 13 months.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and (2) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period substantially in excess of 3 months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

For the above reasons, the Tribunal will make an order for possession.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy 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.

Neil Kinnear

Legal Member/Chair

28/03/19

Date