



**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/19/0253

**Re: Property at 62 Ravelston Street, Carntyne, Glasgow, G32 6DH (“the
Property”)**

Parties:

**Mr Martin Deeney, Mrs Anne Deeney, 25 Netherauldhouse Rd, Glasgow, G43
2XG (“the Applicants”)**

**Miss Dawn Grey, Mr Liam Gilmartin, formerly residing at 62 Ravelston Street,
Carntyne, Glasgow, G32 6DH (“the Respondents”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for recovery of possession should be
granted in favour of the applicants.**

Background

An application was received on 25 January 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 1 and 12 as set out in Schedule 3 of the 2016 Act.

The application included: the tenancy agreement between the parties; copies of two Notices to Leave as required under section 50(1) (a) of the 2016 Act dated 14 and 18 December 2018, citing grounds 12 and 1 respectively; and copies of correspondence from Glasgow City Council to Mrs Deeney regarding Mr Gilmartin’s housing benefit, dated 24 October and 28 November 2018.

The applicants later confirmed that they wished to proceed on ground 8 only, and produced a further copy of the Notice to Leave dated 14 December 2018, together with a track and trace proof of delivery dated 15 December 2018. They also produced email correspondence showing that the notice to leave and a schedule of outstanding arrears had been sent by email to both respondents on the same date.

A case management discussion (CMD) was arranged for 5 April 2019, but this was cancelled as sheriff officers instructed by the tribunal were unable to serve the notification paperwork on the respondents. The sheriff officers reported that a neighbour had advised that the respondents had moved out of the property around two weeks previously. A further CMD was then arranged for 29 May 2019, and the respondents were cited to attend the CMD by advertisement in terms of rule 6A of the 2017 rules. The tribunal had before it a certificate of service by advertisement, stating that service by advertisement had been carried out on the tribunal's website between 26 April and 28 May 2019. An email had also been sent by the tribunal to each respondent on 24 April 2019, informing them about the application and that details were to be made available on the tribunal's website. The tribunal was therefore satisfied that the respondents had lawful notice of the proceedings.

The case management discussion

The postponed case management discussion was held on 29 May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicants were both present and represented themselves. The respondents were not present or represented. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The tribunal delayed the start of the discussion by 15 minutes, in case the respondents had been detained. They did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the case management discussion in the absence of the respondents.

The applicants confirmed that they wished to proceed on ground 12 of Schedule 3 of the Act only, and asked the tribunal to grant an order against the respondents for recovery of possession of the property. They confirmed that no further payments of rent had been made since the application was made. They believed that the respondents had moved out of the property, but wished to obtain an order as they now wanted to sell the property.

The most up to date rent statement received by the tribunal on 14 May 2019 showed that as at 29 May 2019, the outstanding rent arrears totalled £4198.88. The statement showed that no rent payments had been made since October 2018.

Findings in Fact

The tribunal made the following findings in fact:

- The applicants are the joint owners of the property.
- There was a private residential tenancy in place between the applicants and the respondents. The tenancy commenced on 29 June 2018.
- The monthly rent payable in terms of the tenancy agreement was £525 per month.
- As the only eviction ground stated in the notice to leave was ground 12, the relevant period was 28 days in terms of section 54(2) (b) of the 2016 Act. The notice to leave was dated 14 December 2018, but the date before which an application for an eviction order would not be submitted to the tribunal had not been completed.
- The respondents owed rent arrears of £4198.88 as at the date of the CMD, and had been in rent arrears continuously since 29 September 2018.

Reasons for Decision

The tribunal noted that the applicants had omitted to include at Part 4 of the notice to leave the date before which an application would not be submitted to the tribunal. The applicants had not, however, made an application to the tribunal until 18 January 2019, which was more than the required 28 days' notice. In all the circumstances, the tribunal was satisfied that the notice to leave had been validly served on the respondents in terms of the 2016 Act.

Ground 12 as set out in Schedule 3 of the 2016 Act states:

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by 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 payable as one month's rent under the tenancy on that day, and
 - (ii) 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
- (b) 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 on the evidence before it that the requirements for ground 12 are established. It was clear from the rent statements before the tribunal that the

respondents were at the date of the CMD in arrears of more than one month's rent, and that they had been in arrears of rent for a continuous period of three or more consecutive months.

The tribunal then considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a universal benefit, in terms of ground 12 (2) (b). The paperwork which the applicants had submitted with their application showed that Mr Gilmartin had been in receipt of housing benefit, and that these payments had been suspended in October 2018 due to a change in his circumstances. Mrs Deeney said that the housing benefit payments had been stopped because Mr Gilmartin had started working. She said she had spoken to the housing benefit office, and had been told he was no longer entitled to the benefit. She said she had gone to a meeting with the housing benefit office about this, but Mr Gilmartin had not come to it as arranged. She said that to her knowledge he had not taken any further action or appealed the decision, and that there were not outstanding benefits issues which had led to the arrears.

On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The tribunal is therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.

Decision

The tribunal grants an order in favour of the applicants against the respondents for recovery of possession of the property.

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.

S O'Neill

Legal Member/Chair

29/5/19

Date