

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

Chamber Ref: FTS/HPC/EV/19/1573

Re: Property at 212 Main Street, Wishaw, ML2 7LU (“the Property”)

Parties:

TCIB Residential LLP Trading as Newkeylets, 119 Main Street, Wishaw, ML27AU (“the Applicants”)

Mr Allan Nisbet, Ms Louise Ford, 212 Main Street, Wishaw, ML2 7LU; 212 Main Street, Wishaw, ML2 7LU (“the Respondents”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background:

The application was made on 22 May 2019. The application asked for eviction of the Respondents on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Attached to the application were:

1. the Private Rented Tenancy Agreement for tenancy commencing 5 December 2017,
2. Copy Notice to Leave dated 5 April 2019 with the date on which proceedings could first be raised stated as 6 May 2019,
3. Copy S 11 Notice,
4. Customer Ledger 1.1.2015 up to and including 22 May 2019 for the property showing arrears as at that date of £900

A Case Management Discussion (CMD) was scheduled for 14 August 2019 and both parties advised of the date, time and venue.

P Hennig - McFatridge

Sheriff Officers confirmed service of the notification documentation on the Respondents having been carried out on 10 July 2019.

No representations were received from the Respondents. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

The Case Management Discussion

Mr Andy Smith, partner in Newkeylets, attended the CMD on behalf of the Applicants. The Respondents did not attend. Mr Smith advised that the arrears still stand at £900.

He referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. He further explained that the arrears arose during a time when the Respondents received housing benefit directly paid to them, which they did not pass on in rental payments. The Applicants had since applied for direct payments and are currently in receipt of payments of Universal Credits directly paid to the Applicants, which is why the arrears remained constant for the last few months. The Respondents had not made any attempt to repay the arrears and are ignoring communications. The Applicants thus wish to proceed with the application for the eviction order. The arrears started in January 2019 and have been in place since then continuously as shown in the customer ledger. As at 14 August 2019 they amount to £900 and exceed the monthly rent amount of £450. The Applicants have been in direct contact with the Council and know that the benefit payments had been in place during the time when the arrears arose. The Notice to Leave had been served personally by Mr Smith on 5 April 2019 on the Respondents. The Applicants agree that the only ground considered should be Ground 12 as Ground 11 does not relate to arrears of rent.

There were no representations from the Respondents.

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 5 December 2017 (clause 5).**
- 2. Rent of £450 per month is payable in advance on the 5th of the month (clause 7)**
- 3. From 6 December 2018 to 13 March 2019 no payments were received.**
- 4. The Applicants issued to the Respondent a Notice to Leave dated 5 April 2019.**
- 5. This was served by personal service on 5 April 2019.**
- 6. It detailed that the ground on which the Applicants intend to apply to the First Tier Tribunal was "You are in rent arrears over three consecutive months" and in part 3 detailed that the arrears at that point were £1,350.**
- 7. In part 4 it stated that an application would not be submitted to the Tribunal before 6 May 2019.**

8. The Respondents have not made any payments towards the arrears.
9. On 14 March 2019 Universal Credit payments started to be paid directly to the Applicants reducing the arrears to £900.
10. The outstanding amount as of 14 August 2019 is £900.
11. This constitutes more than one month's rent.
12. As at 14 August 2019 the Respondents have been in arrears of rent for the property for over 7 months.

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondents and the Respondents did not attend the CMD.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondents did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

S 51 of the Act states:

Eviction order

51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier 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.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 12 in Schedule 3 of the states

Rent arrears

- 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.

It is not disputed that the Respondents have been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondents were made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application. The Tribunal on the basis of the Customer Ledger and the oral evidence of Mr Smith accepted that the arrears on the day the Tribunal considers the application on its merits are more than one month's rent as the arrears were £900 and the monthly rent is £450. The Respondents have not provided any information that would indicate that the arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was satisfied on the basis of Mr Smith's evidence at the CMD that the benefit payments were in place at that time but that the payments at that time were made directly to the Respondents and not forwarded to the Applicants as rental payments.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act

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.

P Hennig - McFatridge

Legal Member/Chair

14. 8. 2019

Date