



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/22/1676

Re: Property at 38 Willow Lane, Dumfries, DG1 3TZ (“the Property”)

Parties:

Mrs Michele Dorine Kirkpatrick, 38 Carolines Crescent, Ellon, AB41 8BN (“the Applicant”)

Mr Ben Stokoe, 38 Willow Lane, Dumfries, DG1 3TZ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

1. Introduction

This hearing concerned an Application in relation to a Private Residential Tenancy under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The hearing took place by teleconference due to the covid-19 pandemic.

2. Attendance and Representation

Aaron Doran, Raeburn Christie Clark & Wallace, 12-16 Albyn Place, Aberdeen, AB10 1PS attended for the Applicant. A Trainee solicitor Rebecca Essen from the firm was in attendance. There was no objection to this.

The Respondent was not present. He was present at the last hearing of the case which was a Case Management Discussion. He was aware a hearing was fixed and the reasons for same.

3. Background

A case management discussion first took place on 25th August 2022 in this case and the Respondent was personally present. He indicated he had been unsuccessful in obtaining representation. The Tribunal determined that it was in the interests of justice and in accordance with the overriding objective of the Tribunal to fix a Hearing in this application. This was to allow the Respondent an opportunity to obtain representation and to consider also obtaining medical evidence. A hearing was fixed to consider the issue of reasonableness further.

4. Preliminary Matters

The Tribunal discussed with the Applicant's representative that the Respondent was not present. He confirmed he had tried to contact the Respondent since the case management discussion without success. He confirmed the Applicant herself had not had recent contact and had not attempted contact since the CMD. There had been no contact from the local authority homelessness team or any representative.

The Applicant had lodged written submissions, an updated rent statement and an up to date Affidavit prior to this hearing. The Applicant was available to provide oral evidence if required but wished to rely on the Affidavit.

The Respondent had not lodged anything with the Tribunal prior to this hearing.

There was no other preliminary matters raised.

5. Summary of Hearing.

The Applicant's representative adopted the Applicant's affidavit as his evidence in respect to the Applicant. He confirmed the property was the Applicant's only rent property. She was financially affected by the long period of non payment of rent. She had increased her own mortgage to purchase the Property and also had to pay landlord insurance and registration fees. She also sought to be able to financially assist her daughter at university by payment of rental on a flat. She had taken steps before the application for eviction was lodged to communicate with the Respondent seeking to provide assistance and she had sought to make repayment proposals.

The Applicant's representative relied on his written submissions and sought that an eviction order be now granted by the Tribunal. He also added that in terms of the forthcoming legislation he considered that this case would have met the basis of the exception that the arrears were substantial. The rent statement as at September 2022 for the property confirmed that the rent due on the property

by the Respondent was £7200. This amounted to over 14 months of arrears. The last payment made to the rent account was £800 in July 2021.

6. The Respondent's position set out by him to the previous Case Management Discussion.

The Respondent had sent in email representations prior to the case management discussion in this case. The Respondent previously told the Tribunal at the case management discussion he had been financially struggling in the last couple of years with a gambling addiction. He also had said that his mental health was not the best. He had offered to pay £150 on top of the rent but that had not been paid or included in his previous email submissions to the Tribunal. The Respondent had said that he has 2 sons who are 5 years old and 14 years old and who stay over during the week with him but they reside elsewhere. The Respondent had said he had been in and out of work but had been working for 4 months in a new job and was in the assessment process to for ADHD.

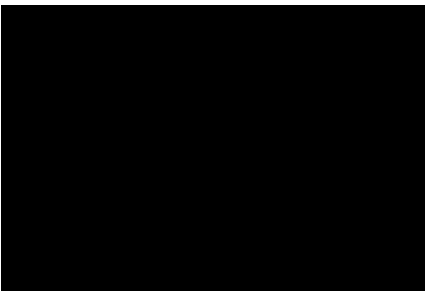
7. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been provided an opportunity to obtain representation and to obtain medical evidence. No further written representations had been lodged by the Respondent and he was not in attendance. No representation had been secured and there had been no contact between the Respondent and the Applicant since the case management discussion in August 2022.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 16th September 2020. The Respondent had not challenged this at the said case management discussion. A Notice to Leave was sent to the Respondent on 29th April 2022. The Applicant's representative has sent pre action requirement correspondence to the Respondent and a copy of same was lodged.**
- 5. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.**
- 6. As at September 2022 rent arrears for the property due by the Respondent amounted to £7200. No payments had been made by the Respondent to the rent for the property since July 2021.**

7. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
8. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
9. Further the Tribunal was satisfied that the rent arrears were of a substantial nature.
10. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
11. The Tribunal noted the Local Authority under the 2016 had been notified.
12. On the evidence available to the Tribunal the Respondent had no dependents residing with him, was now working, had been given opportunity to seek assistance and help to make payments to the rent arrears which was unsuccessful. The Applicant was financially affected by the non payment of rent since July 2021 and wished to financially support her daughter at university. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
13. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.



Legal Member

24th October 2022

Date