



**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/20/0215**

**Re: Property at Flat 2/1, 77 Bridge of Weir Road, Linwood, PA3 3ER (“the Property”)**

**Parties:**

**Mr Iain Bermingham, Mrs Hazel Bermingham, 34 Ladeside Gardens, Kilbirnie, KA25 7EA; 34 Ladeside Gardens, Kilbirnie, KA25 7EA (“the Applicants”)**

**Mr Finlay Carson, Mr Michael McLaughlin, Flat 2/1, 77 Bridge of Weir Road, Linwood, PA3 3ER; Flat 2/1, 77 Bridge of Weir Road, Linwood, PA3 3ER (“the Respondents”)**

**Tribunal Members:**

**Helen Forbes (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondents in favour of the Applicants.**

**Background**

1. This is an application dated 21<sup>st</sup> January 2020, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicants are seeking an eviction order under section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The application was accompanied by copy tenancy agreement between the parties, which commenced on 8<sup>th</sup> August 2019 with a monthly rent of £515, copy section 11 Notice under the Homelessness Etc. (Scotland) Act 2003, copy Notice to Leave dated 14<sup>th</sup> December 2019, copy correspondence from the Applicants to the Respondents, and bank statements.
2. Intimation of the action and notification of a Case Management Discussion (“CMD”) to take place on 30<sup>th</sup> March 2020 was made by Sheriff Officers on 27<sup>th</sup> February 2020.

3. By Order dated 19<sup>th</sup> March 2020, the CMD set down for 30<sup>th</sup> March 2020 was postponed to 28<sup>th</sup> May 2020, as part of the measures to manage the COVID-19 outbreak.
4. By Order dated 19<sup>th</sup> May 2020, the CMD set down for 28<sup>th</sup> May 2020 was postponed to 9<sup>th</sup> July 2020, as part of the measures to manage the COVID-19 outbreak.
5. By Order dated 10<sup>th</sup> July 2020, the CMD set down for 9<sup>th</sup> July 2020 was postponed to 13<sup>th</sup> July 2020, as part of the measures to manage the COVID-19 outbreak.
6. Parties were notified of the CMD to take place on 13<sup>th</sup> July 2020 by letter dated 11<sup>th</sup> June 2020.

### **Case Management Discussion**

7. A CMD took place by telephone conference on 13<sup>th</sup> July 2020. The Applicants were in attendance. There was no attendance by the Respondents.
8. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the postponed CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondents upon the representations of the Applicant and the material before the Tribunal.
9. The Applicants moved for the eviction order to be granted. The last payment of rent made by the Respondents was on 8<sup>th</sup> September 2019. No rent has been paid for eight months.

### **Findings in Fact**

10.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 8<sup>th</sup> August 2019 with a monthly rent of £515.
  - (ii) The Respondents have been in arrears of rent for three or more consecutive months.
  - (iii) Notice to Leave has been served upon the Respondents.
  - (iv) At the date of the CMD, the Respondents were in arrears of rent by an amount greater than the amount payable as one month's rent.

- (v) The Respondents' rent arrears are not due to a delay or failure in the payment of a relevant benefit.

### **Reasons for Decision**

11. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, 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; (2) the tenant 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.
12. The Tribunal is satisfied that Ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit.
13. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondents in terms of the Act.
14. In terms of section 51(1) of the Act, the Tribunal must issue an eviction order in the circumstances.

### **Decision**

15. An eviction order is granted against the Respondents in favour of the Applicants.

### **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.**

H Forbes

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Legal Member/Chair

13<sup>th</sup> July 2020

Date