



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 and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) (Regulations) 2017.

Chamber Ref: FTS/HPC/EV/20/0551

Re: Property at 3 St Margarets Court, Bellshill, North Lanarkshire, ML4 1FE (“the Property”)

Parties:

Adelphi Scott Limited, 19 Adelphi, Aberdeen, AB11 5BL (“the Applicant”)

Kimberley Rushton, 3 St Margarets Court, Bellshill, North Lanarkshire, ML4 1FE (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be issued against the Tenant in respect of the Property.

Background

This is an application for recovery of the Property. The application is dated 13th February 2020. Intimation of the case management discussion was made on the Respondent on 29th July 2020.

The Case Management Discussion

The case management discussion was held on 20th December 2020. It was held by audio conference because of the current public health crisis. The Respondent was not present. Ms Elle Piaget and Mr David Davie of Core Citi Lets, the Applicant’s letting agent, were present.

Preliminary Matters

The Legal Member outlined the purpose of a case management discussion. Ms Piaget said that, since the application had been lodged, the level of rental arrears had risen to £4,500 and that the Respondent had paid no rent since she had taken entry to the Property.

Documents Before the Tribunal

- 1. Private residential tenancy agreement dated 25th June 2019 showing a date of commencement of the same date and monthly rental of £375.**
- 2. The application dated 13th February 2020.**
- 3. Copy Notice to Leave dated 15th January 2020 which states that an application to the First-Tier Tribunal will not be made prior to 12th February 2020.**
- 4. Sheriff Officer's certificate of intimation in connection with service of the Notice to Leave.**
- 5. Copy Notice to Local Authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.**
- 6. Rent statement as at date of application showing rent arrears of £2,250.**
- 7. Sheriff Officer's Certificate of Service in respect of intimation of the case management discussion.**

The Law

Private Housing (Tenancies) (Scotland) Act 2016

Section 51(1)

- (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*

Schedule 3 Part 3

12 Rent arrears

- (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.*
- (3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if-*
- (a) *for three or more consecutive months the tenant has been in arrears of rent, and*
 - (b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- (4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

Findings in Fact and Law

- 1. The Applicants and Respondents entered into a private residential tenancy agreement for the Property dated 25th June 2019.**
- 2. The tenancy commenced on 25th June 2019.**
- 3. The monthly rent for the Property in terms of the tenancy agreement is £375.**
- 4. A Notice to Leave was served on 15th January 2020.**
- 5. The rental arrears on 15th January 2020 was £2,250**
- 6. The rental arrears on 20th August 2020 is £4,500.**
- 7. The Respondent has been in rent arrears for three or more consecutive months.**
- 8. An appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act has been served on the relevant local authority.**
- 9. Non- payment of rent is not due to any issues experienced by the Respondent in connection with non- payment or delay in payment of State benefits.**
- 10. The Respondent has been in rent arrears for three or more consecutive months.**

Reasons

The Tribunal accepted the documentary evidence before it to support that there is a private residential tenancy in existence in respect of the Property, that the rent contractually due in respect of that tenancy is £375 and that there were arrears on 15th January 2020 of £2,250.

The Tribunal accepted the documentary evidence in respect of the Notice to leave which had been served on the Respondent and the notice under the Homelessness etc. (Scotland) Act 2003 served on the local authority.

The Tribunal accepted Ms Piaget's submission that the current level of rent arrears is £4,500. Ms Piaget said that she had no knowledge that the arrears of rent was as a result of the Respondent having any difficulties with payment of any State benefits. She said that the Respondent had not paid rent since the commencement of the tenancy. This was accepted by the Tribunal.

The Tribunal considered that it had sufficient information to determine the Application and that a Hearing was not required. The Tribunal granted the order of possession on the basis that it was clear that the Respondent has been in rent arrears for three or more consecutive months and that, given the level of rent arrears, was in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent.

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.

**Martin J. McAllister, Legal Member
20th August 2020.**