

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 Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/20/1312

Re: Property at 10 Fleming Gardens, Camelon, Falkirk, FK1 4BP (“the Property”)

Parties:

Mr Ian Campbell, 7 Erbach Crescent, Laurieston, FK2 9NY (“the Applicant”)

**Mr Robert Stewart, Mrs Agnes Ann Morgan, 10 Fleming Gardens, Camelon,
Falkirk, FK1 4BP (“the Respondent”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the Respondents

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and the first Case Management Discussion (CMD), which was assigned on 18 November 2020 was made upon the respondent by Sheriff Officers on 20 October 2020.

The respondents did not participate in the CMD on 18 November 2020. Consideration of the application was continued on that date to a fresh CMD to allow the applicant’s representative to lodge proof of posting of the Notice to Leave to the respondents, or to produce an affidavit in which certification of the date of posting was confirmed.

The fresh CMD took place on 17 December 2020 at 10 am.

The applicant was again represented by Mrs Jane Gardner of Prestige Mortgages. The respondents failed to participate in the teleconference hearing. There was no barrier to them doing so.

Findings and Reasons

The property is 10 Fleming Gardens, Camelon, Falkirk FK1 4BP.

The applicant is Mr Ian Campbell. He is the landlord. The respondents are Mr Robert Stewart and Mrs Agnes Ann Morgan. They are the tenants. They are son and mother respectively. The applicant is a registered landlord.

The parties entered into a private residential tenancy in respect of the property which commenced on 10 September 2018. The rent was stipulated at the rate of £475 per month. A deposit was paid, also in the sum of £475. The respondents fell into arrears of rent.

The applicant seeks to evict the respondents on the grounds of their rent arrears. A copy of the Notice to Leave, which is dated 10 March 2020, and which was served upon the respondents has been produced. The ground set out in the Notice is that the respondents were in rent arrears over three consecutive months.

The Notice to Leave was served before the coming into force of the Coronavirus (Scotland) Act 2020. The relevant notice period at the time the Notice was served was one of 28 days.

Section 11 Homelessness Notices were issued to the local authority.

The day specified in the Notice as being the earliest day when the applicant expected to commence proceedings before the First-tier tribunal was 19 April 2020. At first glance this date is more than the required period of notice required by section 62 of the Act.

Evidence of service of the Notice was requested from the applicant early in the process. This led to disclosure that despite the Notice being dated 10 March 2020 it was not sent to the respondent at that stage but was sent by post and email sometime after. The copy email shows it was sent by that means on 20 March 2020.

If also posted on 20 March the Notice would have been one day short in terms of intimation. A Direction was issued in advance of the first CMD requiring the Notice period and validity of the Notice to be addressed.

At the first CMD the applicant's representative advised that the date of posting the Notice to Leave had been the day before the email, 19 March 2020. This would make the Notice to Leave valid.

It is to be assumed that the respondent received the Notice 48 hours after it was sent – Section 62(5) of the Act. If posted on 19 March this would make effective service on

21 March 2020. The 28 days' notice period runs from then ie from 21 March 2020. The 28 day notice period would have ended on 18 April 2020. The day to be specified in the notice requires to be the following day – section 62(4) ie 19 April 2020.

At the first CMD the Appellant's representative advised that proof of posting did exist but she had not produced this. The application required to be postponed to a fresh CMD. The applicant's representative was advised that in the event of an inability to trace the proof of posting the Tribunal would be prepared to consider affidavit evidence regarding the date of posting. The proof of posting itself was previously provided directly to the applicant himself who has misplaced it.

By way of email received by the Tribunal on 8 December 2020 the applicant's representative lodged an affidavit executed in the presence of, and countersigned by, Kenneth Marshall, Notary Public on 7 December 2020. This is a declaration by the applicant's representative, Mrs Jane Gardner which certifies that the Notice to Leave was posted on 19 March 2020 before the last collection time by Royal Mail. This affidavit is credible, reliable and unchallenged.

The Tribunal finds that the Notice to Leave was posted on 19 March 2020. It is was valid in these circumstances and can be relied upon in this eviction application.

The eviction proceeds on the basis of rent arrears under Ground 12 of Part 3 of Schedule 3 to the 2016 Act. This requires it to be established that there are three or more consecutive months' rent arrears. Throughout the application process the respondents have been in arrears continuously for more than three months. In fact the Applicant has been in arrears from the start of tenancy coming into operation. A rent statement was produced with the application. This disclosed that at the time of application the respondent was in arrears to the extent of £6,821.28. The arrears have continued to accrue since and have increased. No rent has been received since November 2019. The arrears are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal attached weight to the unchallenged documentary evidence and the submissions of the applicant's representative.

Ground 12 is established. The applicant is entitled to an eviction order under s51 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.

Richard Mill

17 December 2020

Legal Member/Chair

Date