

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 Sections 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/1666

Re: Property at 13 Atholl Street, Hamilton ML3 0PH (“the Property”)

Parties:

**Mr Brian Gibson, 193 Dalrymple Street, Girvan KA26 9BG (“the Applicant”),
and**

**Bannatyne, Kirkwood, France Solicitors, 16 Royal Exchange Square, Glasgow
G1 3AG (“the Applicant’s Representative”) and**

Mr Jason Cushley, 13 Atholl Street, Hamilton ML3 0PH (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

M Lyden- Ordinary Member

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant an eviction order.

Background

1. This Application was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave served on the Respondent and the Section 11 (Homelessness Etc.

(Scotland) Act 2003) Notice intimated to South Lanarkshire Council as well as copies of the Applicant's letting agent's correspondence with the Respondent in terms of the pre-action requirements. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

Case Management Discussion 7th October 2021

3. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 10am today. The Applicant's Representative's Ms E Matheson and the Respondent attended.
4. Ms Matheson stated that the Respondent was in arrears of rent in the sum of £2785.19. The Respondent candidly stated that there were further arrears owing of £425.00. It was agreed that the total arrears owing, at present, are in the sum of £3210.19 and that the Respondent has been in arrears of rent for more than three consecutive months. The Respondent also candidly stated that he been suffering from mental health problems, that he had attended the CMD to bring closure to the matter and wanted certainty as to when he would be leaving the Property. He stated that he anticipated that an eviction order would be granted. He said that he had liaised with South Lanarkshire Council regarding alternative accommodation and would take any eviction order that was granted to his case worker for further assistance in this regard. The Respondent said that he is not working, has applied for Universal Credit and that it is his intention to make payment of arrears after he has left the Property and once he has gained work. Ms Matheson said that the Applicant was adversely affected, financially, as a result of the increasing rent arrears and asked that the eviction order be granted as the ground for eviction, of more than three consecutive months of rent arrears being owing, was satisfied and it was reasonable to do so.

Findings in Fact and Law and Reasons for Decision

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
7. The Tribunal considered all of the Application papers, including the PRT, Notice to Leave and Rent Statements lodged by the Applicant's Representative, as well as the statements and submissions of the Applicant's Representative's Ms Matheson and the Respondent.

8. It was agreed that the total arrears owing, at present, are in the sum of £3210.19 and that the Respondent has been in arrears of rent for more than three consecutive months.
9. The Applicant, through his letting agents, has complied with the pre-action requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020.
10. The Respondent is seeking alternative accommodation with the assistance of South Lanarkshire Council.
11. Having considered all of the evidence and submissions, the Tribunal finds in fact that the Respondent had been in rent arrears for three or more consecutive months at the date of the Application, and is in arrears of £3210.19 at the present date. The Tribunal finds in law that the ground in Schedule 3 (12) (1) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

Decision

12. The Tribunal therefore makes an eviction order as sought in this Application.

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.

G McWilliams

7th October 2021

Legal Member

Date