



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/21/2451

Re: Property at 11 Union Street, Brechin, DD9 6HG (“the Property”)

Parties:

Mr Alan Bruce, 19 Park Road, Paisley, PA2 6JP (“the Applicant”)

Ms Elaine Robertson, Mr Raymond Kessack, 11 Union Street, Brechin, DD9 6HG (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms J Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application received in the period between 7th October and 11th November 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant’s representative included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 26th October 2020, copy Notice to Leave dated and served on 31st March 2021, copy section 11 notice, rent schedule, and copy pre-action requirement letters dated 16th February, and 8th and 26th March 2021.
2. Notification of the application and a Case Management Discussion set down for 25th January 2022 was served upon the Respondents by Sheriff Officers on 21st December 2021.

Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 25th January 2022. The Applicant was not in attendance and was represented by Mr Paul Goodman, Rent Locally Tayside and Fife. The Respondents were not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondents.
5. Mr Goodman said the Respondents had contacted the Applicant’s representative in early December 2021 to say they were moving out of the Property. Further emails had been received stating that the moving out date had been delayed for various reasons including work that required to be carried out to the new property, and isolation due to Covid-19. The last communication was received on 5th January 2022 and nothing further had been received. There have been visits to the Property, but there was no response. There has been a lack of communication on the part of the Respondents. The rent arrears as of 26th January 2022 will be £4900.
6. In response to questions from the Tribunal as to the Respondents’ circumstances, Mr Goodman said he was not aware of any children in the Property. An application had been made for direct payments of the housing component of Universal Credit to the Applicant in respect of both Respondents, but payment has only been made in respect of one Respondent. This payment does not cover the rent. Mr Goodman believes that one Respondent may have moved out already, and this may be why only one Respondent is receiving Universal Credit. There had been a report of one Respondent losing their employment.
7. With respect to reasonableness, Mr Goodman said the arrears are high. There is a mortgage on the Property and the payments of rent being made by Universal Credit barely cover the mortgage.

Findings in Fact and Law

8.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 26th October 2020 at a monthly rent of £525.
 - (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.
- (vi) The pre-action requirements for private residential tenancies have been met.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

9. 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.
10. The Tribunal is satisfied that the necessary Notices to Leave have been correctly issued to the Respondents in terms of the Act.
11. The Tribunal is satisfied that Ground 12 has been established.
12. 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. The pre-action requirements were met.
13. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
14. Unfortunately, the Respondents were not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

15. An eviction order in respect of the Property is granted 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.

Helen Forbes

Legal Member/Chair

25th January 2022
Date