



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/21/3083

Re: Property at 52 Queen Street, Alva, FK12 5EJ (“the Property”)

Parties:

Alligin Properties Ltd, 2 Greenburn Field, Milnathort, KY13 9XR (“the Applicant”)

Ms Cyd Flynn, 52 Queen Street, Alva, FK12 5EJ (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under Ground 12 under schedule 3.

Background

1. The application for an eviction order was accepted by the tribunal on 8 March 2022. The Applicant seeks an eviction Order under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The tribunal paperwork was served on the Respondent by Sheriff Officers service on 31 March 2022 by means of a letterbox.
3. No written representations were submitted by the Respondent.

The Case Management Discussion- 18 May 2022

4. A Case Management Discussion (CMD) took place on 18 May 2022 at 10am by conference call. The Applicant was represented by Mrs Barclay.
5. The Respondent did not participate.
6. The paperwork having been served on the Respondent by Sheriff Officer service, the tribunal was satisfied that proper intimation of the application

and the date assigned had been made on the Respondent and proceeded in her absence.

7. The paperwork submitted along with the Application was examined and discussed.
8. The Applicant is the registered owner of the Property and landlord.
9. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on or around 23 June 2018, with the same start date.
10. The rent is £550 per calendar month payable in advance.
11. A Notice to Leave dated 15 May 2021 was served on the Respondent by Sheriff Officer service on 19 May 2021, by means of a letterbox.
12. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 10 December 2021.
13. The rent account statements produced were considered. The rent arrears as at the date of serving of the Notice to Leave was £4,450. The rent arrears as at today is £9,684 including the last rent due on 23 April 2022.
14. The last payment made by the Respondent towards the rent was £2,000 on 10 November 2021. No further payments have been received.
15. The Applicant's Representative sought an eviction order today. She advised the tribunal that in addition to the Pre-Action Requirements letters produced along with the application, further efforts had been made to contact the Respondent to aid in paying rent but there had been no engagement at all. The cashier made monthly telephone calls without success. A trace had been carried out and it is understood that the Respondent still resides within the Property. House calls had been done but there had been no-one at home. A male at the Property had refused to allow a heating engineer access to carry out a safety check. Since before the difficulties with Covid there were indications that the fiancé of the Respondent and her adult daughter may be living in the Property. All three adults were believed to be in full time employment. The last payment towards rent came from the Respondent directly; to their knowledge the Respondent was not and had never been in receipt of benefits, nor were they aware of any benefits pending. A payment Order had been granted by a tribunal for unpaid rent of £6,246 that had since been served on the Respondent and an earnings arrestment had been served and was being processed by the employer of the Respondent. It was reasonable to grant the order as they had done everything they could to try to resolve the matter but there has been no engagement by the Respondent. The agents had also gone to the Property. There was no answer, but it seemed clear that the tenant was still living there. The rent arrears were significant.
16. An adjournment took place to allow discussion between the tribunal members.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on or around 23 June 2018, with the same tenancy start date.

- II. The rent is £550 per calendar month payable in advance in terms of the PRT.
- III. A Notice to Leave dated 15 May 2021 was served on the Respondent by Sheriff Officer service on 19 May 2021, by means of a letterbox.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 10 December 2021.
- V. The Pre Action Requirements have been complied with.
- VI. The total arrears figure due today is £9,684.
- VII. The last payment to rent was £2000 on 10 November 2021. No further payments have been received from the Respondent.
- VIII. The tenant being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- IX. The Tribunal is satisfied that it is reasonable that an eviction Order should be granted.

Reasons for Decision & Decision

The paperwork having been served on the Respondent by Sheriff Officer service, the tribunal was satisfied that proper intimation of the application and the date assigned had been made on the Respondent and proceeded in her absence. There was no participation by the Respondent, and she had not submitted to the tribunal any response to the application or any written representations.

The tribunal had regard to all that was said, and the paperwork produced and carefully considered it.

A Private Residential Tenancy (PRT) was entered into between the Parties. The Respondent had undertaken to pay rent.

A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority.

The Tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was satisfied they had been complied with.

The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the discretion to be applied.

The rent arrears have accrued over a long period of time. The rent arrears are substantial. The Respondent was called upon to pay the ongoing rent as well as the arrears or enter into a repayment agreement and has failed to make any payment after 10 November 2021. No explanation has been given by the Respondent for non-payment and she had failed to engage despite extensive attempts by the Applicant's agent to contact her.

It considered 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'. It is not. The information before the tribunal indicated that the Respondent is in full time employment and that an earnings arrestment is being processed by her employer to enforce a payment Order previously granted by a tribunal for unpaid rent due.

The Tribunal is satisfied an Order should be made today and it was reasonable to do so. The decision is unanimous.

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.

S Christie

18 May 2022

Legal Member/Chair

Date