

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/22/2050

Re: Property at G14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Property”)

Parties:

Carling Property Group (formerly FTP (Angus) Ltd), Alloway Hall, Alloway Place West, Dundee, DD4 8UA (“the Applicant”)

Miss Elaine Galbraith, G14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 24 June 2022 the Applicant’s representatives, Bannatyne Kirkwood France & Co applied to the Tribunal for an order for the eviction of the Respondent from the property arising from the Respondent accruing rent arrears during her tenancy of the property and under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of service, Section 11 notice with copy email, copy pre-action letters together with a rent statement and other communications in support of the application.
2. A legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 12 August 2022.
4. By email dated 14 September 2022 the Applicant's representatives provided an updated rent statement.

The Case Management Discussion

5. A CMD was held by teleconference on 28 September 2022. The Applicant was represented by Miss Wooley from the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the proceedings had been given to the Respondent determined to proceed in her absence.
6. Miss Wooley referred the Tribunal to the rent statement submitted with her email of 14 September and confirmed that the amount outstanding remained at £3584.17 as no further payments had been made by the Respondent.
7. Miss Wooley confirmed the parties had entered into a Private Residential Tenancy Agreement that had commenced on 20 January 2021 at a rent of £525.00 per calendar month. She advised the Tribunal that the Applicant had changed its name from FTP(Angus) Ltd to Carling Property Group but did not know the date on which the change of name took place but that it was after the formation of the tenancy.
8. Miss Wooley confirmed that a Notice to Leave had been sent to the Respondent by email on 10 May 2022 advising that eviction was being sought under Ground 12 of Schedule 3 of the 2016 Act as the Respondent was in arrears of rent. The Tribunal noted that the Notice advised the Respondent that proceedings would not be raised before 10 June 2022.
9. The Tribunal noted that Miss Wooley had sent an email to Angus Council attaching a Section 11 Notice on 24 June 2022.
10. The Tribunal noted that pre-action letters had been sent to the Respondent in June, September, October and November 2021 and in May 2022.
11. The Tribunal also noted that at the date of service of the Notice to Leave the Respondent owed rent amounting to £2667.52 and at the date of the CMD this had risen to £3584.17.
12. Miss Wooley advised the Tribunal that the Respondent lived alone in the property. She had no children. Miss Wooley said the Respondent had been in employment at the commencement of the tenancy but was uncertain as to the current position. She said the last contact with the Respondent had been in June when she had a query about the level of rent arrears. Miss Wooley said she was not aware of the Respondent having any health issues or at least none

had been brought to her attention. She went on to say that the Respondent had never intimated any reason for her accrual of rent arrears.

13. Miss Wooley confirmed that the Applicants owned multiple properties for rent. The Tribunal noted that the property was subject to a standard security.

14. Miss Wooley asked the Tribunal to grant the application.

Findings in Fact

15. The parties entered into a Private Residential Tenancy agreement that commenced on 20 January 2021 at a rent of £525.00 per calendar month.

16. The Respondent has accrued rent arrears amounting to £3584.17.

17. The Respondent was served with a Notice to Leave on 10 May 2022. At that time the Respondent had been in arrears of rent for more than three months.

18. Intimation of these proceedings was given to Angus Council by way of a Section 11 Notice on 24 June 2022.

19. As at the date of the CMD the equivalent of more than one month's rent was outstanding.

20. The Applicant's letting agents sent several pre-action letters to the Respondent advising her to take independent advice.

21. The Respondent has not offered any explanation for the level of rent arrears.

22. The Respondent lives alone at the property.

Reasons for Decision

23. The Tribunal was satisfied from the written representations, the documents produced and the oral submissions that the parties had entered into a Private Residential Tenancy that commenced on 20 January 2021 at a rent of £525.00 per calendar month.

24. The Tribunal was also satisfied that the Respondent had fallen into arrears of rent and as at the date of the CMD owed the Applicant £3584.17.

25. The Tribunal was also satisfied that the Respondent had been properly served with a valid Notice to Quit under Ground 12 of Schedule 3 of the 2016 Act. The Respondent had also been sent appropriate pre-action letters and Angus Council had been sent a section 11 Notice. The Tribunal was therefore satisfied given the level of arrears at the date of the CMD that procedurally the Applicant met the test for an order for eviction under Ground 12. However, the Tribunal

still had to be satisfied that in all the circumstances it would be reasonable to grant the order.

26. The Tribunal took account of the fact that the Respondent despite being given an opportunity to submit written representations and attend the CMD chose to do neither. Furthermore, she had not communicated to any extent with the Applicant's representatives or offered any explanation for her failure to maintain her rent payments. She appears to live in the property alone and has as far as the Applicant's representatives are aware no health issues. The Respondent has accrued a substantial amount of rent arrears owing as she does £3584.17 and it seems likely this would be likely to continue to increase. The Applicants have granted a standard security over the property. Taking everything into account the Tribunal is satisfied that the application should be granted.

27. The decision of the Tribunal is unanimous.

Decision

28. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**28 September 2022
Date**