

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/22/4446

Re: Property at 68 Pentland Avenue, Dundee, DD2 2BS (“the Property”)

Parties:

Mrs Rose Mary McFarlane, 5 Hayston Terrace, Dundee, DD2 2ED (“the Applicant”)

Misa Amelita Benn, 68 Pentland Avenue, Dundee, DD2 2BS (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. By decision dated 3 February 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal intimated the application to the parties by letter of 1 March 2023 and advised them of the date, time and conference call details of today’s CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the

procedure to have been fair. The Respondent was invited to make written representations by 22 March 2023. No written representations were received.

The case management discussion (“CMD”)

4. The Applicant was represented by Miss Katie Butchart. The CMD took place by conference call and proceeded in the absence of the Respondent. The Applicant’s representative explained that the arrears of rent have increased since the application was submitted and now total £6,880. The Applicant agreed a repayment arrangement with the Respondent in December 2019, but the Respondent failed to adhere to that agreement. The Applicant’s representative agreed a further repayment arrangement in August 2022 and that agreement was not adhered to by the Respondent. The Tribunal observed that the email correspondence which has been lodged referred to an application for a discretionary housing payment and also referred to universal credit. The Applicant’s representative had no information to suggest that a discretionary housing payment had been made. The Applicant’s representative contacted the local authority who confirmed that the Respondent was not in receipt of housing benefit but could not confirm whether the Respondent was in receipt of universal credit. The Respondent is believed to live in the property with 2 children. The last payment made by the Respondent towards the rent account was in September 2022. The level of rent arrears now equates to almost 12 months’ rent. It was submitted that it was reasonable for the Tribunal to grant an order evicting the Respondent from the property.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 1 July 2018.
6. The Applicant’s representative served a Notice to Leave on the Respondent by email on 16 November 2022.
7. When the Notice to Leave was served, the Respondent had accrued rent arrears exceeding the equivalent of 6 months’ rent.

Reason for Decision

8. The Tribunal proceeded on the basis of the written documents which were before it and submissions made at the CMD. The Applicant’s representative invited the Tribunal to make the Order sought. The Applicant relied upon Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent has been continuously in arrears of rent since August 2019. Despite agreeing repayment arrangements, the Respondent failed to adhere to the agreements. The Respondent has not made payment of rent since September 2022. There was no information before the Tribunal to indicate

that the arrears of rent were related to a delay or failure in the payment of benefits. The tenancy appears to be unaffordable for the Respondent. The Respondent failed to lodge written submissions and failed to participate in the CMD. The Tribunal was satisfied that it was reasonable to grant the order evicting the Respondent from the property.

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.

3 April 2023

Date