

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/22/2224

Re: Property at 260 Dalriada Crescent, Motherwell, ML1 3YA (“the Property”)

Parties:

Mrs Patricia Steel, 49 Brackenhill Drive, Meikle Earnock, Hamilton, ML3 8AY (“the Applicant”)

Mr Sandor Ternai, 260 Dalriada Crescent, Motherwell, ML1 3YA (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The application for an eviction order is dated 6 July 2022 and accepted by the tribunal on 3 August 2022. The Applicant seeks an eviction Order under Ground 12, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The paperwork was served on the Respondent by Sheriff Officers service on 2 September 2022, by leaving the paperwork in the hands of the Respondent’s wife.
3. Written representations were invited from the Respondent by 22 September 2022. None were submitted.

The Case Management Discussion (CMD)

4. A Case Management Discussion took place on 19 October 2022 at 10am. It started slightly late to allow time for Parties to join.

5. The Applicant participated, represented by her daughter Mrs Pipe. Mrs Pipe is the joint owner of the Property along with the Applicant and assists with business matters.
6. There was no participation by the Respondent. The tribunal considered the Sheriff Officer's certificate and was satisfied proper intimation had been made on the Respondent of both the application paperwork and notification of the details of the day and time and joining details for the CMD.
7. The tribunal was given updated and more detailed information by the Applicant and the Applicant's Representative as follows:
 - (a) The rent arrears figure including the rent due on 25 September 2022 is £4,250.
 - (b) The last payment to the rent account was made on 29 December 2021 of £470. There had been a £20 deficit carried in the rent account since September 2021 to that point, and the rent arrears have steadily increased in line with the rent due since then.
 - (c) The Applicant, who is elderly, takes lead with the collection of rent and has a routine of texting tenants reminding them when their rent is due and then dealing with any queries that arise. This is what happened with this tenant. The Applicant has five let properties in total in the same geographical area. In addition to her contact, she also has a tradesperson who services the properties and can also contact the tenants.
 - (d) Letters were sent in March 2022 providing the tenant with the information required regarding sources of financial advice for tenants in rent arrears.
 - (e) She received two texts back, one in Hungarian that made no sense even when they tried to translate it and another that mentioned the word benefit. She had received texts before in English when rent was to be paid slightly late. The Respondent when setting up the tenancy had a bilingual person present to assist.
 - (f) This is the first time she has had to make an application to a tribunal.
 - (g) She was told at the outset of the tenancy that the Respondent would be the only occupier of the Property which is a two bedroomed flat. She subsequently was told that there was a family living there- the Respondent, his wife and four children. She would not have let it out to so many.
 - (h) The Respondent was in work as far as she knew when the Property was let to him. It was his manager who accompanied him. No deposit was taken. Checks had been carried out to verify his identity and suchlike as they were members of a landlord's Association, and they could take advice from it on tenancy set ups.
 - (i) The Property is in a modest area and her properties are all maintained, and repairs dealt with promptly.
 - (j) An eviction order is sought.

Findings in fact

- I. A Private Residential Tenancy was entered into between the Parties with a date of entry of 25 June 2021.
- II. The contractual rent agreed is £470 per calendar month payable in advance on 25th of the month.

- III. A valid Notice to Leave was issued to the Respondent and served by Sheriff Officers. It indicated that an application to the tribunal could be made at the end of the notice period on 4 June 2022.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 6 July 2022.
- V. The Pre Action Requirements have been complied with.
- VI. The total arrears figure due today is £4,250.
- VII. The last payment to rent was made on 29 December 2021.
- VIII. No further payments have been received from the Respondent to pay the monthly rent due or address the arrears.
- IX. The Respondent as 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.
- X. The Tribunal is satisfied that it is reasonable that an eviction Order should be granted.

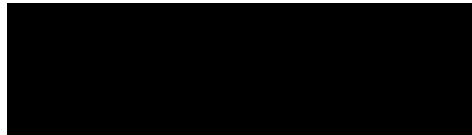
Reasons for Decision

- 8. The tribunal had regard to all that was said, and the paperwork produced and carefully considered the information. A Private Residential Tenancy (PRT) was entered into between the Parties. Whilst a written tenancy agreement had been given to the Respondent, it was not in the model tenancy format and the Applicant accepted that work required to be done on her part to have all her tenancy agreements made up to the current standard required. The tribunal indicated that this matter needed attention.
- 9. The Respondent had undertaken to pay the stated rent in advance on the 25th of the month.
- 10. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority.
- 11. The Tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was satisfied they had been complied with.
- 12. The Respondent had failed to address payment of the ongoing rent or arrears. The Respondent was believed to be in work when the tenancy was taken on by him. It is noted in the paperwork produced that when the Sheriff Officers served the Notice to Leave, the Respondent's wife stated he was in employment to them and gave details. There was no information in front of the tribunal to indicate any benefit application had been made by the Respondent to cover the rent or that one was pending.
- 13. 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.
- 14. The rent arrears figure is substantial. The rent is due to be paid in full in advance on the 25th of each month. The payments stopped after December 2021. The Respondent had failed to engage in any dialogue with the Applicant to inform her of the reasons for non-payment therefore support could not be given to try to resolve the non-payment. There appeared to be no real prospect of the rent payments resuming or any contributions being made towards the arrears.

15. The tribunal considered whether the tenant being in arrears of rent is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no information presented to the tribunal to confirm that was the position.
16. The tribunal is mindful of the potential implications for the Respondent and his family should an order be granted. The tribunal notes that the Respondent had not told the Applicant that they would all be staying in the Property otherwise she would not have let it to them as it was too small for their accommodation needs.
17. The Tribunal is satisfied based on all the information available that 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.



Legal Member/Chair

19 October 2022
Date