

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0627

Re: Property at 15 Thornyflat Street, Ayr, KA8 0NQ (“the Property”)

Parties:

Edgar Residential Property Limited, 60 Fullerton Drive, Troon, KA10 6LF (“the Applicant”) and

Waddell and Mackintosh Solicitors Limited, 36 West Portland Street, Troon, KA10 6AB (“the Applicant’s Representative”) and

Mr John Lowe, 15 Thornyflat Street, Ayr, KA8 0NQ (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

S. Brydon - Ordinary Member

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

Background

1. This Application, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave (“NTL”) served on the Respondent and the Section 11 (Homelessness

Etc. (Scotland) Act 2003) Notice intimated to South Ayrshire Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. The Application papers and Guidance Notes had been validly served upon the Respondent by Sheriff Officers on 14th July 2023.
4. The Respondent had not lodged any representations in respect of the Application.

Case Management Discussion

5. A Case Management Discussion (“CMD”) proceeded by remote teleconference call on 18th August 2023. The Applicant’s Representative’s Mr D Murdoch attended. The Respondent Mr Lowe did not attend and was not represented.
6. Mr Murdoch stated that since lodging the Application the Applicant had not received any rental payments. He said that Mr Lowe had not paid any rent since July 2022. Mr Murdoch stated that there were 15 monthly rental payments, each in the sum of £625.00, and total rent of £9375.00, outstanding. He said that the Applicant was considerably disadvantaged given the extent of rent outstanding. Mr Murdoch also stated that the Applicant understands that the Respondent lives alone and that a partner, who previously lived with the Applicant but was not a party to the PRT, left the property several years ago. Mr Murdoch said that he had no further information regarding the Respondent’s personal circumstances. He stated that the Applicant had not received any communication from the Respondent, or any representative, since a firm of solicitors had sent a letter to the Representative on the Respondent’s behalf on 28th February 2023. Mr Murdoch had previously sent a copy of the latter document to the Tribunal’s office. Mr Murdoch submitted that as the Respondent had been served with all papers in respect of the Application for an eviction order and had not had not attended the CMD and not made any representations regarding the reasonableness of the granting of an eviction order, such an order should be granted.

Findings in Fact and Law and Reasons for Decision

7. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
8. Schedule 3 (12A) (2b) of the 2016 Act provides that it is an eviction ground that the tenant has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant.

9. The Tribunal considered all of the Application papers, including the PRT, NTL and Rent Statement lodged by the Applicant, as well as the submission of the Applicant's Representative's Mr Murdoch.
10. The Respondent had not lodged representations with the Tribunal regarding the reasonableness of the grant of an eviction order or attended the CMD to provide any evidence, and/or make any submission, to oppose, and contradict the basis for the order sought by the Applicant.
11. Having considered all of the evidence, representations and the submission of Mr Murdoch, the Tribunal finds in fact that the Respondent has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the PRT when the NTL had been given to the Respondent, and that the Respondent is in rent arrears of £9375.00 at the present date. The Tribunal finds in law that the ground in Schedule 3 (12A) (2b) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

Decision

12. The Tribunal therefore makes an eviction order as sought in this Application.

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.

Gerald McWilliams

G McWilliams

Legal Member

18th August 2023

Date