

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 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/21/0552

Re: Property at 182 Charles Avenue, Arbroath, DD11 2HD (“the Property”)

Parties:

Mr Mark Skelly, 3 Inchcape Road, Arbroath, DD11 2DF (“the Applicant”)

Miss Paige Sharp, 182 Charles Avenue, Arbroath, DD11 2HD (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

The Applicant seeks an Eviction Order based on Grounds 1, 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”).

The Application is accompanied by a Notice to Leave which specified the relevant Grounds and which was emailed to the Respondent on 29 June 2020 and provided a date of 1 January 2021 after which proceedings may be raised. The Application was also accompanied by a rent statement which, although not entirely clear, appeared to show a history of payments said to have been received and missed. Grounds 1 was said to be engaged because the Applicant wished to sell the Property and a letter from a solicitor was produced which confirmed that the solicitor was instructed by the Applicant to sell

the Property. Grounds 11 was said to be engaged because the Respondent had breached a term of the tenancy by keeping a dog without the consent of the Applicant.

Evidence was also provided of how the Applicant was said to have complied with their obligations under The Rent arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Evidence was also provided of compliance with s11 of the Homelessness etc. (Scotland) Act 2003.

The Case Management Discussion

The matter called for a Case Management Discussion by conference call at 2 pm on 7 June 2021. The Applicant was personally present on the call. The Application and information about how to join the conference call had been served on the Respondent by Sheriff Officers on 12 May 2021. The Tribunal therefore decided to proceed in the absence of the Respondent.

The Tribunal decided to consider the Application in respect of Grounds 12 and thereafter consider whether it would be necessary to hear further about the alleged application of Grounds 1 and 11.

Notwithstanding that the Application was unopposed, The Tribunal carefully questioned the Applicant not only in respect of the substance of Grounds 12 but also in respect of the reasonableness or otherwise of making any order.

Findings-in-fact

Having heard from the Applicant and having considered the Application and documents, the Tribunal made the following findings in fact.

- I. *The parties entered into a Private Residential Tenancy at the Property which commenced on 20 January 2021;*
- II. *The Applicant is the landlord and the Respondent is the tenant;*
- III. *The contractual monthly rent due is £450.00;*
- IV. *The Respondent fell into rent arrears from the start of the tenancy and only made a first payment of £200.00 in May 2020. No further payments were made at all until October 2020 when the sum of £450.00 was paid for 5 consecutive months. No further payments were made after the last of these payments were made in February 2021;*

- V. *The Applicant has made efforts to enquire with the Respondent if there is a reason she has not been able to pay the rent. The Applicant also sent a letter to the Respondent directing her to an advice provider regarding her rent arrears;*
- VI. *The Applicant believes the Respondent has been in and out of jail recently and understands her to be a prolific offender;*
- VII. *As at 29 June 2020, the Respondent was in rent arrears of £2,500.00;*
- VIII. *The Applicant validly served a Notice to Leave in respect of Grounds 12 of the Act on the Respondent by email on 29 June 2020;*
- IX. *The Notice to Leave specified that no proceedings would be raised before 1 January 2021;*
- X. *When this Application was lodged on 4 March 2021, the Respondent's rent arrears had increased significantly to £3850.*
- XI. *The legal test set out in Grounds 12 of Schedule 3 of the Act is met in that the Respondent was in arrears of rent of at least one full month's worth of rent for a period of three months prior to the sending of the Notice to Leave. This also applied at the date of today's Case Management Discussion;*
- XII. *The Applicant has complied with their obligations under The Rent arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020;*
- XIII. *The Respondent may have lived at the Property with a child who the Applicant believes may have been removed from her care by social services;*
- XIV. *The Respondent cannot afford the Property and there is no prospect of her realistically clearing her arrears and making the monthly rental payments in the near term;*
- XV. *The Respondent has not cooperated with the Applicant in attempting to address her financial difficulties. For a period, the housing element of Universal Credit had been paid direct to the Applicant but this had ceased at February 2021 and arrears continued to mount;*
- XVI. *There has been financial impact on the Applicant in that he is receiving no income from the property and his wife has had to return to work early from maternity leave in order to resume earning, which contributes to the upkeep of their household including young children;*

Commented [FW1]: I think the rent statement shows one payment of £450 in Jan 20, no payments in Feb, Mar and Apr then a subsequent payment of £200 in May, and no payment in June - so arrears at June would be £2050?

XVII. *Grounds 12 of Schedule 3 of the Act is engaged and the Applicant has complied with all the necessary statutory processes before bringing this Application;*

XVIII. *It is reasonable that the Eviction Order sought be granted.*

Reasons for Decision

Having made the above findings in fact, the Tribunal decided to grant an Eviction Order on the basis of Grounds 12. It was agreed with the Applicant that in light of this decision there was no need to further consider the merits of the Application in respect of the remaining alleged Grounds 1 and 11.

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.

A. McL

Legal Member:

Date: 07/06/2021