



**Decision 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/22/2573

Re: Property at 98 Main Street, Crosshill, Fife, KY5 8AN (“the Property”)

Parties:

Mr Brian Menzies, 73 Park Street, Crosshill, Fife, KY5 8BH (“the Applicant”)

Mr Colin Murray, 98 Main Street, Crosshill, Fife, KY5 8AN (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted.

Background

1. An application was submitted dated 27 July 2022 in terms of Rule 109 of the Chamber Rules for a Private Residential Tenancy Eviction Order in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. Along with the application form, the Applicant lodged the following documents:
 - Copy tenancy agreement
 - Copy Notice to Leave
 - Copy Section 11 Notice
 - Copy Rent statement
 - Copy correspondence between Landlord, Letting Agent and Tenant
2. In fact, no copy of the Notice to Leave was received and the Tribunal wrote to the Applicant on 28 July 2022 asking for a copy of the Notice to Leave which was provided.
3. The Tribunal wrote to the Applicant again on 6 September 2022 asking for evidence that the section 11 Notice was sent to the local authority and also requested an updated rent statement.

4. This information was provided by the Applicant by email dated 7 September 2022.
5. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 29 November 2022. The Respondent was advised that he was required to submit any written representations in response to the application by 19 December 2022.
6. By email dated 15 December 2022 written representations were lodged on behalf of the Respondent by his newly appointed representative, Iona Watson of Frontline Fife.
7. By email dated 23 December 2022, the Applicant submitted an updated rent statement showing that the level of rent arrears stood at £5785.50 as at 15 December 2022.

The Case Management Discussion

8. The case management discussion took place today by teleconference. The Applicant was in attendance along with, Helen Couser, Fife Letting Service as a supporter. Iona Watson of Frontline Fife attended on behalf of the Respondent who did not attend.
9. The Applicant advised that the rent arrears now stood at £5185.50 as there had been a payment made of £600 after the updated rent statement had been lodged in December. There were substantial rent arrears incurred over a long time period. He understood the Respondent to be working full time. He understood the Respondent to be living with his wife, who was not working, and two school age children. He felt that the Respondent had been less than transparent about his earnings and advised that lots of payment plans had been agreed but then never adhered to. In a previous civil case for rent arrears, the Tribunal had granted a payment order in the sum of £4412.50 on 18 August 2022 but attempts to enforce this had proved unsuccessful due to the Respondent having ceased working for his employer for a period of time. He felt that the Respondent had no intention of paying the arrears and felt he had complied with the Pre-action Requirements for seeking repossession in applications involving rent arrears.
10. For the Respondent, Ms Watson advised that he accepted responsibility for the arrears and accepted that there had been a number of payment plans previously agreed which had not been adhered to. The Respondent did not oppose the granting of the Repossession order. The Respondent did not dispute that the Pre-action Requirements had been met. He had not found alternative accommodation but had been accepted onto the local authority's homeless list. He had hoped to have made payments towards the arrears but had temporarily ceased work last October due to his wife's health. Ms Watson understood the Respondent and his wife to live with two school age children.

Findings in Fact

11. The Tribunal made the following findings in fact:

- The Parties entered into a Private Residential Tenancy Agreement commencing 4 May 2018;
- The monthly rent was £575;
- As at the date of the case management discussion the rent was in arrears in the sum of £5162.50;
- Despite a previous order being made by the Tribunal for payment of rent arrears in the sum of £4412.50, no payments towards the arrears had been made;
- The Applicant had complied with the Pre-action Requirements when seeking repossession on ground of rent arrears.

Reasons for Decision

12. In making its decision, the Tribunal took account of the written submissions and evidence before it along with the oral submissions made by, or on behalf of, parties at the case management discussion. In particular, the Tribunal took account of the level of rent arrears and the amount of time over which they had accrued, the fact that the Applicant had complied with the Pre-action Requirements and the fact that the Respondent does not oppose the granting of the repossession order. In all the circumstances it was reasonable to grant the order for repossession of the Property.

Decision

13. The Tribunal decided that an order for repossession of the Property be granted in favour of the Applicant.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

A Mathie

13 January 2023

Legal Member/Chair

Date