

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/1215

Re: Property at 30 Wallace Avenue, Stevenston, KA20 4BN (“the Property”)

Parties:

Mr Thomas Milgrew, 78 Townfoot, Irvine (“the Applicant”)

Mr William Mitchell, 30 Wallace Avenue, Stevenston, KA20 4BN (“the Respondent”)

Tribunal Members:

Morag Leck (Legal 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 for recovery of possession of the property.

Background

This is an application for an eviction order dated 16th April 2019 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant included with his application copies of the following documents:-

- i) Private Residential Tenancy Agreement
- ii) Notice to Leave with execution of service
- iii) Section 11 notice with email intimation

All of these documents had been prepared in terms of the provisions of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") and the procedures set out in that Act appeared to have been correctly followed and applied.

The parties were advised by letter dated 30th May 2019 of the date, time and venue for a Case Management Discussion (CMD) and the Respondent was advised to make any written representations by 21st June 2019. The respondent's letter had been served by Sheriff Officers on 3rd June 2019. No written representations were received from him.

Case Management Discussion

A CMD was held at Ardeer Community Centre, Stevenston on 3rd July 2019. The Applicant did not attend personally and was represented by Mrs Kathleen McCallan of Ayrshire Lettings and Sales. The Respondent did not attend. The CMD proceeded in the absence of the Respondent. This case was heard alongside a related case which proceeds under Chamber Reference FTS/HPC/CV/19/1350.

The Tribunal noted that the Applicant holds title to the Property jointly with Mrs Agnes Milgrew. The applicant's representative had submitted an Extract Death Certificate for Mrs Milgrew prior to today's hearing which was before the Tribunal and Mrs McCallan confirmed that the applicant was now the sole proprietor of the property.

Mrs McCallan also confirmed that Ayrshire Lettings and Sales had taken over as letting agent for the property on 23rd June 2018. The previous letting agent was no longer trading. An Email confirming this and transfer of agency from County Properties to Ayrshire Letting and Sales was also before the Tribunal.

The Notice to Leave dated 15th January 2019 narrated that the respondent had been in arrears of rent for a consecutive period of three months and that rent arrears at the date of the Notice amounted to £1875.00

Mrs McCallan confirmed that an order for eviction was sought on the basis of ground 12 of schedule 3 of the Act. She confirmed that no further rental payments had been made and that as of today's date rent arrears have accordingly been accumulating over 11 months. The total rent due as at today's date was £4125.00

Mrs McCallan also advised that all efforts to contact the Respondent regarding outstanding arrears had been unsuccessful and no contact received from the Respondent after September 2018 when he had advised of a change in circumstances in that he was working. The last rental payment was received in September 2018. Several visits had also been made to the Property but unsuccessfully. Neighbours had advised that the Respondent was still living at the Property. Mrs McCallan also advised that contact had been made with the relevant agencies and as far as she was aware there were no outstanding Housing Benefit or Universal Housing Credit issues,

Findings in Fact

1. The Applicant and the Respondent entered into a Tenancy Agreement on 23rd April 2018.
2. The rent payable was £375.00 per month payable in advance.
3. The Applicant served Notice to Leave personally on the Respondent by Sheriff Officers on 15th January 2019.
4. No rent has been paid by the Respondent since September 2018. The Respondent is therefore in arrears of rent for a sum which equates to more than three consecutive months of arrears.
5. The Applicant is entitled to the Order for Repossession.

Reasons for Decision

The Tribunal proceeded on the basis of the written documents before it.

The Respondent was given an opportunity to provide written representations and attend the CMD and he failed to do so.

In terms of section 51 of the Act, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 of the Act applies.

Para 12 of Schedule 3 provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if 1) at the beginning of the day on which the Tribunal first considers the application for an eviction on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and (2) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly in consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal is satisfied that Ground 12 has been established. The Respondent is in substantial arrears of rent which currently exceed one month's rent and has been in arrears for a continuous period in excess of three months. The Tribunal is further satisfied that the Respondent being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

Decision

The Tribunal granted the application and made an Eviction Order against the Respondent.

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.

Morag Leck

Legal Member

Date

3rd July 2019