



**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/19/2546**

**Re: Property at 5A Castle Court, Ellon, AB41 9JY (“the Property”)**

**Parties:**

**Ellon Castle Gardens, 57 Station Road, Ellon, Aberdeenshire, AB41 9AR (“the Applicant”)**

**Mr Warren Henderson, 2 Windford Road, Aberdeen, AB16 6NQ (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent**

- 1 By application dated 15<sup>th</sup> August 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Notice to Leave dated 9<sup>th</sup> July 2019 stating that proceedings for possession will commence no earlier than 9<sup>th</sup> August 2019 and citing ground 12;
  - (ii) Tenancy Agreement dated 8<sup>th</sup> May 2019;
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council; and
  - (iv) Rent Account from 9 May 2019 to 9 July 2019.

- 2 By Notice of Acceptance of Application dated 26<sup>th</sup> August 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 9<sup>th</sup> October 2019.
- 3 On 3<sup>rd</sup> September 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

### **Case Management Discussion**

- 5 The Case Management Discussion took place at the Credo Centre Aberdeen on 9<sup>th</sup> October 2019. Angie Holmes appeared from Aberdeenshire Leasing on behalf of the Applicant. The Respondent did not attend.
- 6 Ms Holmes confirmed that the Respondent had paid nothing since the commencement of the tenancy. The current arrears were £2625. She was aware that the tenant had been getting assistance from universal credit but was not paying the housing element to his rent. He had previously said that there was universal credit outstanding but she had no evidence of that. Ms Holmes advised that she had tried to contact the tenant on a number of occasions but he had not been in touch. She believed he was no longer in the property having carried out a recent inspection. However he had left some belongings behind therefore the order for repossession was required.

### **Findings in Fact**

- 7 The parties entered into a Tenancy Agreement dated 8 May 2019 in respect of the Property;
- 8 The rent due under the terms of the Tenancy Agreement was £525 per month;
- 9 The arrears as at the date of the Case Management Discussion amount to £2625;
- 10 The rent account has been in arrears for three or more consecutive months;
- 11 The rent arrears are not a result of any delay or failure in the payment of housing benefit.

### **Reasons for Decision**

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the

application paperwork had been served upon the Respondent by Sheriff Officers. He had not taken the opportunity to make written representations, nor had he attended the Case Management Discussion.

- 13 The Tribunal noted that the Applicant sought recovery of possession under ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon the Respondent confirming the Applicant was relying up that ground as part of the proceedings against him.
- 14 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. The Tribunal must grant the order for repossession where:-
  - (i) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater one month's rent under the tenancy on that day, and 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
  - (ii) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 15 In the absence of any evidence to the contrary, the Tribunal accepted the submissions Ms Holmes made on behalf of the Applicant at the Case Management Discussion. The Tribunal found her position to be credible and had no reason to question the evidence she had put forward.
- 16 The Tribunal was therefore satisfied based on its findings in fact that arrears of rent in the sum of £2625 were outstanding as at the date of the Case Management Discussion and that the rent payable under the terms of the tenancy was £525 per month. The Tribunal further accepted that the Respondent had paid nothing to the rent account since the commencement of the tenancy in May 2019, and therefore the rent account had been in arrears for more than three consecutive months. There was nothing before the Tribunal to evidence that the arrears were due to any delay or failure in payment of a relevant benefit. Whilst there had been mention of the tenant having received universal credit, he had not sought to put any evidence before the Tribunal to confirm that a backdated payment was due that would reduce the arrears below their current level. Accordingly the Tribunal could not make a finding that the arrears were due to a failure to pay a relevant benefit.
- 17 The Tribunal therefore found ground 12 to be met and determined to make an order for repossession of the property.

## **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.

Ruth O'Hare



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Legal Member/Chair

9/30/19  
\_\_\_\_\_  
Date