

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of 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/18/3320

Re: Property at 22 Tiree Court, Dreghorn, Irvine, KA11 4JB (“the Property”)

Parties

Allan Russell, 27 Holmston Gardens, Ayr, KA7 4JB (“the Applicant”)

Linda Campbell, 22 Tiree Court, Dreghorn, Irvine, KA11 4JB (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland grants an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 11 December 2018 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an

order for recovery of possession of the property at 22 Tiree Court, Dreghorn, Irvine, KA11 4JB ("the Property").

2. On 19 December 2018 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 13 February 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 4 March 2019. The Tribunal advised parties on 13 February 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 7 March 2019. This paperwork was served on the Respondent by David Smith, Sheriff Officer, Glasgow on 13 February 2019 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 4 March 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 7 March 2019. The Applicant was personally present. The Respondent did not appear and was not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 9 August 2018, Notice to Leave dated 24 October 2018 addressed to the Respondent with Sheriff Officer's Executions of Service dated 25 October 2018, bank statements, various emails dated 25 September, 11 October, 6 and 7 November 2018 from the Applicant to the Respondent, various screen shots of text messages dated 13, 18 and 19 September 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council with proof of recorded delivery on dated 6 December 2018.
7. The Applicant moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 ("the 2016.Act").
8. The Tribunal considered the Private Residential Tenancy dated 9 August 2018 in relation to the Property between the parties. In terms of Clause 7 of the Private Residential Tenancy Agreement, the Respondent agreed to pay monthly rent of £350 to the Applicant with the first payment of rent being on 9 September 2018 and payments then due on 9th of each month. The Applicant

explained the Respondent had fallen into arrears of rent and that the arrears are increasing. She had not paid the first month's rent due on 9 September 2018. He referred to various text messages and emails addressed to the Respondent demanding she pay the rent, The Respondent had totally ignored the Applicant. She had never paid any rent since moving into the Property. He explained arrears were increasing and no attempt had been made by the Respondent to clear the arrears or pay any rent. He submitted the current arrears would increase to £2450 as of 9 March 2019, assuming the Respondent did not pay any rent or arrears before then.

9. Mr Russell had made enquiries with both the Department of Works and Pensions and North Ayrshire Council soon after the Respondent had fallen into arrears. He had been hopeful that he would be able to get the rent paid direct. However he was advised that the Respondent had not applied for any benefits.
10. The Tribunal referred to the Notice to Leave under Section 50(1) and Grounds 11 and 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 dated 24 October 2018 addressed to the Respondent and served on the Respondent by Sheriff Officers on 25 October 2018. Mr Russell also advised he had also sent a copy of the Notice to Leave by email to the Respondent on 6 November 2018. Under Clause 3 of the tenancy agreement parties were in agreement that all communication including notices could be served by way of email at the email address set out in Clauses 1 and 2. The Notice to Leave requested that the Respondent leave the Property by 9 December 2019. The Respondent had not vacated the Property.
11. Mr Russell explained Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served by way of Recorded Delivery on 6 December 2018.
12. Mr Russell also explained that he called round to the Property approximately 5 weeks previously and managed to speak to the Respondent. She had begged the Applicant not to evict her from the Property and promised she would go to the Council that morning to claim benefits. He had also provided the Respondent with details of a local advice agency. Subsequent enquiries by the Applicant showed that she had not made any applications for benefits.
13. The Applicant moved for an order for eviction on the basis the Respondent had been continuously in arrears of rent for three consecutive months and the arrears were in excess of a month's rent.

Findings In Fact

14. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement dated 9 August 2018 in relation to the Property at 22

Tiree Court, Dreghorn, Irvine, KA11 4JB that the Respondent would pay the Applicant a calendar monthly rent of £350 with the first payment due on 9 September 2019.

15. The Respondent had fallen into arrears of rent. She had not paid the first month's rent due on 9 September 2018 and had never paid any rent throughout the whole currency of the tenancy to the Applicant.
16. The Applicant had attempted to engage with the Respondent to get her to pay rent and encouraged her to apply for housing benefit. The Respondent had refused to do so.
17. On 25 October 2018 by way of Sheriff Officers the Applicant served a Notice to Leave on the Respondent requesting that she remove from the Property before 9 December 2018 based on her failure to pay rent. The Applicant had also emailed a copy of the Notice to Leave to the Respondent on 6 November 2019.
18. The Respondent did not remove from the Property by 9 December 2018 and was still resident in the Property as at the 7 March 2019.
19. Arrears of rent were £1400 as of 10 December 2018, being the date of application. Arrears were increasing and would stand at £2450 as of 9 March 2019. That figure represented more than one month's arrears. The Respondent had been in arrears for a continuous period of three or more consecutive months, the first rent payment being due on 9 September 2018.
20. There were no outstanding benefits issues which resulted in the delay or failure in payment of benefits that the Respondent may have been entitled to.
21. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on North Ayrshire Council by way of Recorded Delivery on 6 December 2018.

Reasons For Decision

The Applicant provided evidence of non-payment of rent in the form of text messages, emails and his bank statement. The Tribunal was satisfied that Ground 12 of Schedule 3 to the 2016 Act had been established by the Applicant. On the basis of the text messages, emails and bank statement and the supporting oral submissions made on behalf of the Applicant the Tribunal was satisfied the Respondent was in arrears of rent greater than £350 being the monthly rent and that she had been in arrears of rent for a continuous period for three or more months. The Tribunal was also satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal however was not satisfied Ground 11 of Schedule 3 was relevant; in Ground 11(3) reference to a term of tenancy under Ground 11 does not include the term under which the tenant is required to pay rent.

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.

S.Evans

**~~Shirley~~ Evans
Legal Member/Chair**

**7 March 2019
Date**