

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/19/0059

Re: Property at 61 Ford Avenue, Dreghorn, Irvine, KA11 4BN ("the Property")

Parties:

Steven Easton Limited, 2 Newfield Drive, Dundonald, Ayrshire, KA2 9EW ("the Applicant")

Ms Vicki Nimmo, 61 Ford Avenue, Dreghorn, Irvine, KA11 4BN ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-
 - a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice
 - a copy of the Respondents payment history

3. The Applicants' representative Mr Easton and Ms Thoms from Steven Easton Limited, appeared on behalf of the Applicant. There was no appearance by the Respondent.
4. Notice of the Hearing had been served on the Respondent by sheriff officers on 8 April 2019. As I was satisfied that the Respondent had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in her absence. I was also aware that she had contacted the Tribunal office this morning advising that she would not be attending today's hearing and she was prepared for it to proceed in her absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. He also confirmed that the notice to leave had been served by email. He provided an updated rent account and advised that the current level of arrears were in £4020. The last rental payment received was on around 28 September 2018.
6. He advised that although the notice to leave sought eviction under breach of tenancy ground, the relevant ground was clearly that rent arrears for a period of more than 3 months ground was applicable in this case. He submitted that the notice to leave was clear about the reason for seeking eviction.
7. He advised that the current level of arrears were £4020. He advised that they had served the notice to leave due to the rent arrears. The Applicant had attempted to get the Respondent to pay the rent and arrears and had tried to agree a repayment plan with her however this had been unsuccessful. They had sent various letter, emails and made numerous calls to her. He did not consider that the arrears were due in part or wholly due to a delay in benefits, and he submitted that there had never been any mention of waiting for benefits by the Respondent. He also believed that the Respondent worked.
8. The Applicant's representative advised that they had been contact with the Respondent, however it had not been successful in resolving this issue.
9. The Applicants' representative advised that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and he did not consider that there were outstanding benefits issues causing the arrears.
10. He advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

11. The Tribunal found the following facts established:-

12. There existed a private residential tenancy between the Applicants and the Respondent. It had commenced on 30 March 2018.
13. The tenancy was for the property 61 Ford Avenue, Dregghorn.
14. The tenant is Vicki Nimmo.
15. The landlord is Steven Easton Limited.
16. Clause 7 of the Tenancy Agreement provides that the rent for the property is £425 per calendar month. It is payable in advance and due on the 28th of each month.
17. The notice to leave was addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 15 November 2018. It confirmed that proceedings would not be brought until 16 December 2018. It had been sent to the Respondent by email on 16 November 2018. The notice to leave advised the tenant that she was in arrears of rent.
18. That rent arrears appeared to have been outstanding since April 2018.
19. There were rent arrears outstanding at the date of the application in March 2019 which totalled at least one month's rental due under the tenancy.
20. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
21. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

22. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
23. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
24. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
25. Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to

and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

26. I found that the terms of sub-paragraph 2 were met and accordingly, I consider that I must find that the ground in sub paragraph 1 applies; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

27. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Ms Melanie Barbour

Legal Member/Chair

29. 4. 19

Date