

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 under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/2196

Re: Property at 74 Sycamore Avenue, Johnstone, Renfrewshire, PA50BL (“the Property”)

Parties:

Position Property Ltd, Charolais Barn, Shutt Green Lane, Stafford, Staffordshire, ST19 9LX (“the Applicant”)

Miss Kim McTavish, 74 Sycamore Avenue, Johnstone, Renfrewshire, PA5 0BL (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the Respondent.

Introduction

1. This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016 for an Eviction Order under Ground 12 of Schedule 3.
2. The two-member Case Management Discussion took place at 10.00 am on 2 December 2022 by teleconference.
3. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally, the notice periods have been extended by virtue of the 2020 Act. We were satisfied that proper notice had been given.
4. The applicant is the landlord and the respondent is the tenant. The applicant was represented by Mrs Waters.

5. The respondent has failed to engage with the application. Mr Hamilton informed us that he was present to take part in the discussion on the respondent's behalf. We let him know that the respondent had not notified HMCTS that he was authorised in this respect. Permission was not granted to allow him to take part in the discussion as he had no entitlement to do so. Accordingly, we informed him that he would be treated as an observer.
6. We asked Mrs Waters what her position was in respect of the information that Mr Hamilton (observer) passed on to the tribunal, and whether she was asking us to grant the order today or continue the matter to a further CMD to allow the respondent an opportunity to take part in the proceedings.
7. We were informed that the respondent has failed to engage with the applicant for a considerable period of time. As it stands, the applicant still has not notified HMCTS of her intention to engage with the application or provide any information in relation to her ability to settle the outstanding rent arrears. The amount of arrears is substantial.
8. After careful consideration, we decided to continue with the discussion and make a decision in the respondent's absence after satisfying ourselves that the papers had been properly served and that the respondent was notified of today's CMD. The respondent has not engaged with the application in any way, has not made contact with HMCTS or made any attempt to engage with the applicant or the application. Taking into account the overriding objective, and all the information before us, we decided that it was fair and just to make a decision today.
9. The Parties entered into a Tenancy Agreement on 12 November 2018 which was due to commence on 16 November 2021. The Tenancy Agreement specifies that £480 is due in respect of rent each calendar month, payable in advance.
10. The applicant asserts that the respondent has accrued rent arrears, at the date of service, in the sum of £2331.89. The ground for the Eviction Order relied upon by the applicant is ground 12 which provides the Tribunal with discretion to grant the eviction order if we were satisfied that rent arrears had accrued of more than three months and it is reasonable to grant the order.
5. Mrs Waters informed us that as at 1st of December 2022, rent arrears stood at £3621.89. The schedule of rent payments show a six-months' period from the 1st of September 2021 until the 1st of January 2022 where no payments were made. A direct payment of Universal Credit was received on the 11th of February 2022 and has continued monthly since then.
6. The respondent receives Universal Credit of £450 every calendar month and has to top up £30 from her own funds to meet the rent liability of £480. There have been long

periods where the respondent has failed to pay the top up. It is the applicant's position that the arrears continue to accrue because of the failure by the respondent to pay the £30 top up and that no effort has been made to tackle the substantial rent arrears accrued over the period from September 2021 to January 2022.

7. A direct payment of Universal Credit is due to be made on the 11th of December 2022 which would reduce the arrears to £3171.89. The respondent's notice was served in 2021. She received copies of all correspondence informing her of her rights, despite which she has failed to engage with the applicant or the application in any way. Accordingly, the applicant seeks an Order for Eviction and a Payment Order in the sum of £3171.89.
8. We were satisfied that the respondent has failed to engage with the application in anyway. For that reason, we have insufficient information before us to indicate that there were circumstances to allow us to find that the granting of the order would not be reasonable.
9. Accordingly, an Order for Eviction is granted.
10. It is helpful to record here that in the separate application for a Payment Order under reference FTT/HPC/CV/22/2197, we decided to grant a Payment Order in the sum of £3171.89.

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.

Lesley-Anne Mulholland

Date 2 December 2022

Legal Member/Chair