

Housing and Property Chamber
First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1448 and FTS/HPC/CV/23/1452

Re: Property at 41A Fairfield Road, Sauchie, Alloa, Clackmannanshire, FK10 2UD (“the Property”)

Parties:

Mrs Louise Brown, 24 Ramsay Tullis Drive, Tullibody, Alloa, Clackmannanshire (“the Applicant”) and

Russell and Aitken Falkirk and Alloa Limited, 19 Mar Street, Alloa, Clackmannanshire FK10 1HR (“the Applicant’s Representative”) and

Ms Jill Collins, 41A Fairfield Road, Sauchie, Alloa, Clackmannanshire, FK10 2UD (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
M Lyden - Ordinary Member**

Decisions in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment by the Respondent to the Applicant of the sum of £4140.00.**

Background

1. These are Applications for an eviction order in terms of Rule 109 (Application for an eviction order) and for a payment order in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

Case Management Discussions 22nd August, 28th September and 27th November 2023

2. Case Management Discussions (“CMDs”) proceeded by remote teleconference calls on 22nd August 2023, 28th September 2023 and also on 27th November 2023 at 1.00pm. Reference is made to the Tribunal’s Notes on the CMDs which took place on 22nd August and 28th September 2023.
3. Mr Pennie, solicitor in the Applicant’s Representative’s firm, attended all three CMDs. The Respondent, Ms Collins, attended the first two CMDs but did not attend the third CMD on 27th November 2023. She sent an e-mail to the Tribunal’s Office in the morning of 27th November 2023, in which she stated that she had an appointment with her mental health nurse at 12.30pm on 27th November 2023 and was not sure if she could attend the CMD which was scheduled to take place at 1.00pm. The Tribunal did not receive any further communications from Ms Collins in advance of the CMD on 27th November 2023.
4. At the CMD on 27th November 2023 Mr Pennie stated that Ms Collins’ rent was continuing to be paid, at the rate of £450.00 per month, directly from DWP. He said that neither Ms Collins, or anyone representing her, had made any contact with him or the Applicant, Mrs Brown, regarding payment of arrears of rent which, he stated, remain in the sum of £4,140.00.
5. In advance of the CMD on 27th November 2023, Mr Pennie had lodged papers with the Tribunal’s office, being a social media post from Ms Collins referring to her dog having had puppies and with an indication that the puppies were possibly being sold to a third party or parties. His email and papers, sent to the Tribunal’s office on 14th November 2023, were subsequently crossed over to Ms Collins but she had not made any representation to the Tribunal’s office in this, or any other, regard in time for the CMD on 27th November 2023
6. Mr Pennie submitted that Ms Collins had had adequate opportunity to address the issue of payment of rent arrears and to reach a satisfactory agreement with Mrs Brown in this regard. He stated that as Ms Collins had failed to do so, had not attended at the CMD on 27th November 2023, and as Mrs Brown continues to have a rent arrears debt of £4,140.00, it was reasonable to grant both an eviction order, based on Ms Collins’ substantial rent arrears, and an order for payment of the amount due in respect of those arrears.

Findings in Fact and Law and Reasons for Decisions

7. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy (“PRT”) if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
8. Schedule 3 (12A) (2b) of the 2016 Act provides that it is an eviction ground that the tenant has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave (“NTL”) is given to the tenant.
9. Section 71 of the 2016 Act provides as follows:
 - (1) In relation to civil proceedings arising from a private residential tenancy-
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
 - (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-
 - (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.
10. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for an eviction order and order for payment of unpaid rent against a tenant (such as the Respondent) in respect of a tenancy such as the tenancy agreement of the parties.
11. The Tribunal had previously noted that Ms Collins is aware of the important nature of these Applications, given her attendance at the two previous CMDs. The Tribunal had adjourned those CMDs to allow Ms Collins the opportunity of making appropriate arrangements to pay rent and rent arrears and also to obtain specialist housing law advice and/or representation in respect of the Applications. Ms Collins had not lodged any representations regarding the Applications with the Tribunal following the last CMD on 28th September 2023 other than in her email sent in the morning of 27th November 2023. The Tribunal’s office had not received any communication from any representative or adviser acting on behalf of Ms Collins.
12. Having considered all of the evidence, representations and the submission of Mr Pennie, the Tribunal finds in fact that the Ms Collins has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the parties’ PRT when the NTL had been given to her, and that she is in rent arrears of £4140.00 at the present date. The Tribunal finds in law that the ground in Schedule 3 (12A) (2b) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

13. The Tribunal found that it is unreasonable to expect Mrs Brown, who had to convert her mortgage for the Property to an interest only mortgage due to the level of unpaid rent, to sustain continuing rent arrears of £4140.00. Ms Collins has been afforded the opportunity to address the issue of the rent arrears but has not made any substantive representations to the Tribunal's office, or Mrs Brown and her Representative, since the last CMD on 28th September 2023. The Tribunal, whilst acknowledging that the Respondent has ongoing health and personal difficulties found that, in all the circumstances of these Applications, it is reasonable that an eviction order, and order for payment of the rent arrears sum, be made. Ms Collins previously stated that she has applied for alternative accommodation and it is to be hoped that her application will be granted soon.

Decisions

14. Accordingly, the Tribunal make an order for eviction of the Respondent, Ms Collins, from the Property and, also, an order for payment by Ms Collins to the Applicant, Mrs Brown, of the sum of £4140.00.

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.

27th November 2023

Legal Member

Date