



**Decision 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/24/4808

Re: Property at 53 Park Road, Hamilton, South Lanarkshire, ML3 6PD (“the Property”)

Parties:

Miss Gillian Harley, 18 Birch Brae, Hamilton, South Lanarkshire, ML3 7LJ (“the Applicant”)

Miss Heather Motherwell, Mr Mark Davis, 53 Park Road, Hamilton, South Lanarkshire, ML3 6PD (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondent

Introduction

These linked applications seek an eviction order on the basis of ground 5; and an order for payment in respect of rent arrears. The applications are under Rules 109 and 111 and Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the applications and the initial Case Management Discussions (CMDs) in both applications were effected upon the respondents by Sheriff Officers on 18 March 2025.

The CMDs took place by teleconference on 1 May 2025 at 10.00 am. The applicant was represented by Miss Donna Marie Stewart of Igloo Estate Agents. The respondents failed to participate in the hearing. There was no known reason for their failure to participate. They have not submitted any written representations.

Findings and Reasons

The property is 53 Park Road, Hamilton, South Lanarkshire ML3 6PD. The applicant is Ms Gillian Harley who is the heritable proprietor and registered landlord of the property. The respondents are Mr Mark Davis and Miss Heather Motherwell who are the tenants.

The parties entered into a private residential tenancy which commenced on 6 May 2023. The agreed rent in terms of the written lease was £655 per month. The rent has increased to £674.65 per month.

The respondents rent payments became erratic 2 months into their tenancy in July 2023. The rent payments were either late or, alternatively, only part-payments were made or no payments at all.

At the time that the payment application was submitted to the tribunal, the respondents were £9,489.15 in rent arrears. A Rule 14A amendment application was timeously lodged increasing the sum sought to £12,862.40. An unchallenged detailed rent statement which the tribunal finds credible and reliable evidences the arrears.

The applicant is entitled to recover arrears of rent lawfully due under the lease. The respondents refuse or unreasonably delay paying the rent due. A payment order is necessary. The respondents do not oppose the payment order application and have made no application for a time to pay direction. The tribunal accordingly made a Payment Order in the sum of £12,862.40.

For the purposes of the eviction application the applicant relies upon ground 5 contained within part 1, schedule 3 to the 2016 Act. This constitutes an eviction ground where the landlord's family member intends to live in the let property. The applicant's mother proposes to do so.

The applicant served the notice to leave upon the respondents by Sheriff Officers on 28 February 2024. In terms of the said notice to leave the respondents were advised that proceedings before the tribunal would not be raised before 27 May 2024. Service of the notice was by sheriff officers on 28 February 2024. Sufficient statutory notice was given. The tribunal was satisfied that the respondents had received adequate notice of the intention to raise proceedings and that the Notice to Leave was valid.

The applicant purchased the property in November 2019 with the sole intention to let the property. After refurbishment the appellant let the property to three previous tenants (February 2020 to September 2021, November 2021 to November 2022 and December 2022 to April 2023) prior to the current respondents taking up occupation.

The applicant has now concluded that due to difficulties in managing the let property and specifically the arrears of rent that she no longer wishes to be a commercial landlord. She considered selling the property but her mother, who is elderly, lives in a block of flats and due to her age and declining mobility it would be of assistance if

she was to take up occupation of the let property which is a ground floor two bedroomed flat. The property would meet her needs.

The tribunal attached weight to the unchallenged written statements of the applicant and her mother. The tribunal was satisfied that ground 5 was established. It is the genuine intention that the applicant's mother occupy the property. The tribunal proceeded to consider all the circumstances of both parties for the purposes of the reasonableness assessment.

The rent arrears pre-action requirements have been complied with. The applicant's representative has been in communications with the respondents to provide them with support and advice. No opposition to the proposed eviction has been suggested with it being reported that advice has been provided to the respondents to remain in the property until such time as an eviction order is granted in order that they can obtain a council property.

The applicant cannot be expected to continue to make the property available in the absence of rent being paid. The lack of rent being paid has had a significant adverse impact upon her financial arrangements given the arrears now stand at over £12,000.

The respondents have also refused to communicate effectively and have refused access for the applicant to carry out necessary property inspections. As a consequence of this the applicant's representative was required to submit a right of entry application to the tribunal in order for an electrician to carry out the necessary EICR and PAT test checks under reference FTS/HPC/RE/24/5890. Entry has still been denied. The applicant has also had reports from the property factor regarding complaints about smoking taking place in the property. The applicants also have a dog for which there is no authority and these issues are in breach of the terms of the tenancy agreement.

The respondents have no known disabilities or other vulnerabilities. They are both active company directors and Mr Davies is known to be employed as a welder. There is no identifiable reason as to why they are unable to meet their rental responsibilities.

There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 notice having been issued by the applicant. In the event of an eviction order being granted the local authority is under a statutory duty to make alternative accommodation available to the respondents, at least in the short term.

In all the circumstances, the tribunal determined that the granting of an eviction order was reasonable.

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.

Richard Mill ³

1 May 2025

Legal Member/Chair

Date
