



**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/19/1482**

**Re: Property at 35 Kincardine Place, East Kilbride, G74 3DN (“the Property”)**

**Parties:**

**Miss Kerry Paterson, c/o Goodearl Property Management Ltd, 3rd Floor, 147 Bath Street, Glasgow, G2 4SN (“the Applicant”)**

**Mr Andrew John McGee, 35 Kincardine Place, East Kilbride, G74 3DN (“the Respondent”)**

**Tribunal Members:**

**Graham harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.**

**Background**

1. By application dated 14 May 2019 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives, Bannatyne, Kirkwood , France & Co, Solicitors Glasgow, provided the Tribunal with copies of the tenancy agreement, Notice to Leave and delivery receipt, Section 11 Notice and email and a rent statement.
2. By Notice of Acceptance dated 10 June 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

3. Intimation of the Case Management discussion was given to the Applicant's representatives by post on 18 June 2019 and to the Respondent by Sheriff Officers on 19 June 2019.

#### The Case Management Discussion

4. The Case Management Discussion was held at Glasgow on 22 July 2019. The Applicant did not attend but was represented by Miss Kirsty Donnelly of the Applicant's representatives. The Respondent attended personally.
5. The Respondent explained that he had previously been housed by South Lanarkshire Council in a bad area and following some difficult times in his life he had managed to save sufficient funds to pay for a deposit and the first rent payment in a private rented property. When doing so he had been under the impression that he would be entitled to housing benefit of £350.00 per month but instead he had been put on Universal Credit and the housing element had only been £248.00 per month. By the time he paid his other outgoings he had virtually nothing left to pay his rent. He had managed to pay a further £500.00 in February 2019 but nothing since then. The Respondent did not dispute that the Applicant was entitled to the return of the property and that he should be evicted but he felt that South Lanarkshire Council had to meet their obligation to provide him with appropriate housing. The Respondent explained that he was trying to better himself and that he had lost family members to drugs and alcohol and that he wanted away from that lifestyle. The Respondent confirmed that he had no Housing Benefit claim outstanding.
6. For the Applicant Miss Donnelly asked the Tribunal to grant the order sought as the terms of Ground 12 of Schedule 3 of the 2016 Act had been met as some rent had been outstanding for a continuous period of three months and more than the equivalent of one month's rent was due at the date of the Case Management Discussion as the current amount outstanding was £2471.51 and the monthly rent was £425.00.
7. For his part the Respondent asked that the eviction should be delayed so that he could be re-housed by South Lanarkshire Council but he also said that the Council would not re-house him until he was evicted.

#### Findings in Fact

8. The parties entered into a Private Residential Tenancy Agreement that commenced on 14 December 2019 at a monthly rent of £425.00.
9. The Respondent paid a deposit of £500.00 and rent of £255.00 at the commencement of the lease.
10. The Respondent paid a further £500.00 in rent in February 2019. He has made no further payments.

11. The Applicant's representatives served a Notice to Leave on the Respondent by email on 10 April 2019 citing Ground 12 of Schedule 3 of the 2016 Act.
12. The Applicant's representatives intimated commencement of proceedings by way of a Section 11 Notice to South Lanarkshire Council on 14 May 2019.
13. The Respondent has been in arrears of rent for a continuous period in excess of three months.
14. As at the date of the Case Management Hearing the Respondent owed the Applicant £2471.51 in arrears of rent.

#### Reasons for Decision

15. The Respondent did not dispute that he had been served with a Notice to Leave nor that the Section 11 Notice had been sent to South Lanarkshire Council. He accepted that he had been in rent arrears for a continuous period of more than three months and that an amount greater than the equivalent of one month's rent was due at the date of the Case Management Discussion. The Respondent also confirmed that there was no benefit claim outstanding. The Tribunal was therefore satisfied that all the requirements for granting an order in terms ground 12 of Schedule 3 of the 2016 Act had been met and as this was a mandatory ground the Tribunal was obliged to grant the order sought.
16. The Tribunal considered the Respondent's request to delay the implementation of the order beyond the appeal period of 30 days but as it seemed that South Lanarkshire Council would only take steps to re-house the Respondent once he had been evicted there did not seem to be any merit in the Respondent's request

#### Decision

17. The Tribunal having considered the submission of both parties and the written representations of the Applicant's representatives finds the Applicant entitled to an order for the eviction of the respondent from the property in terms of Ground 12 of Schedule 3 of the 2016 Act.

#### **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.

Graham Harding

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Legal Member/Chair

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Date

22 July 2019