



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/19/2327

Re: Property at 14 Campsie Crescent, Kirkcaldy, Fife, KY2 6BY (“the Property”)

Parties:

Mr Mohammed Arman, 5 Sir Thomas Elder Way, Kirkcaldy, Fife, KY2 6ZR (“the Applicant”)

Mr Robert Wishart, 14 Campsie Crescent, Kirkcaldy, Fife, KY2 6BY (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 25 July 2017 the Applicant seeks an eviction order in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017 (“the 2017 Rules”) and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). A number of documents were lodged in support of the application including a copy private residential tenancy agreement, copy notice to leave with post office receipt and copy notice to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003 (“the section 11 Notice”). A rent statement showing a balance owing of £2200 was also lodged.

2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 30 August 2019. Both parties were notified that a Case Management Discussion ("CMD") would take place on 7 October 2019 at 10am.
3. The case called for a CMD on 7 October 2019 at Fife Voluntary Action, New Volunteer House, 16 East Fergus Place, Kirkcaldy. The Applicant attended accompanied by his father, Zabair Ahmed. The Respondent did not attend and was not represented. No written representations were received from either party in advance of the CMD.

Case Management Discussion

4. Mr Arman advised the Legal Member that he has had no contact with the Respondent in several months. He has heard from a third party that the Respondent may have vacated the property, but the Respondent has not confirmed this, no notice has been received, and the keys have not been returned. He further advised that no further payments of rent have been received since the application was lodged and the balance now stands at £3850.00. In response to questions from the Legal Member Mr Arman advised that he did not think that the Respondent had paid his rent from Housing Benefit or Universal Credit and that he had been working when he took on the tenancy. He confirmed that the Notice to leave had been issued by recorded delivery and that he had checked the track and trace to confirm receipt, although he had not lodged a copy of this.

Findings in Fact

5. The Applicant is the owner of the property and landlord in terms of a private residential tenancy agreement dated 1 June 2018.
6. The Respondent is the tenant of the property.
7. In terms of the tenancy agreement rent of £550 per month is due to be paid.
8. The Respondent is in arrears of rent in the sum of £3850.00

Reasons for decision

9. The Legal Member proceeded to consider the application, the documents lodged, and the information provided at the CMD by the Applicant. The tenancy is a private residential tenancy which commenced on 1 June 2018. The rent due in terms of the tenancy agreement is £550 per calendar month. The Respondent has made no payments of rent since 4 April 2019 and the sum of £3850 is now owed. The Applicant understands the Respondent to be

in employment and not dependant on state benefits to pay his rent.

10. On 10 June 2019 the Applicant sent a Notice to Leave to the Respondent by recorded delivery post, being the method of communication stipulated in the tenancy agreement. The Notice to Leave stated that the ground for eviction was that the tenant was in rent arrears over 3 consecutive months. The Notice advised that an application would not be submitted to the Tribunal until 13 July 2019. The Applicant also sent a Section 11 Notice to the Local authority notifying them of the intention to lodge an application with the Tribunal. The arrears of rent at the time of lodging the application were £2200. These have increased to £3850. The Respondent did not attend the CMD or lodge representations which dispute the terms of the Application.
11. Paragraph 12 of Schedule 1 of the 2016 Ac states, "(1) it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months" (12(2) states that the Tribunal must find that the ground names in 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 payable as one months rent under the tenancy on that day, and (ii) has been in arrears of rent (by any amount) for a continuous period up to and including that day, of three or more consecutive months, and (b) the tribunal is satisfied that the tenants being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit". The Legal Member is satisfied that ground 12 has been established.
12. Section 54 of the 2016 Act requires a landlord to serve a Notice to Leave in a prescribed format on a tenant prior to lodging an application with the Tribunal. The Legal Member is satisfied that the Applicant has complied with this section and has also complied with the requirement to send a Section 11 Notice to the relevant local authority.
13. The Legal member is satisfied that an eviction order should be granted.

Decision

14. In the circumstances the Legal Member is satisfied that an eviction order should be granted against the Respondent.

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.



**Josephine Bonnar
Legal Member**

10 October 2019