

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 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/EV/18/2528

Re: Property at 94 Sandy Road, Renfrew, PA4 0BU (“the Property”)

Parties:

Mr Alexander MacDonald, 4 Stanely Drive, Paisley, PA2 6HE (“the Applicant”)

Ms Elizabeth Galvin, 94 Sandy Road, Renfrew, PA4 0BU (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017.

This was a hearing in connection with an application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s51 of the Private Housing (Tenancies)(Scotland) Act 2016, ‘the Act’.

The case management discussion ‘CMD’ took place on 20 November 2018 and was adjourned to today’s date. The tribunal made directions for the applicant to lodge further details of the rent arrears, all as set out in the CMD note. The applicant lodged the information referred to in the direction on 29 November 2018.

The tribunal sitting today had the same information before it as the tribunal at the CMD on 29 November 2018. In addition the tribunal sitting today had the copy rent schedule lodged by the applicant on 29 November 2018 in compliance with the direction made on 29 November 2018.

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The CMD note sets out the matters that were agreed and the matters which still require to be resolved today.

The applicant attended the hearing. The respondent attended and was accompanied by Ms Fiona Brown from Shelter as her supporter.

The purpose of today's hearing was to hear evidence from both parties in connection with the discretionary element of ground 12 of schedule 3 of the Act. The tribunal was not satisfied at the CMD on 20 November 2018 that there was an amount equal to or greater than one month's rent outstanding. The evidence produced by the applicant on 29 November 2018 confirmed that this remained the case.

The tribunal was therefore hearing evidence today as to whether the respondent was in arrears of rent for three or more consecutive months and whether it is reasonable on account of that fact to issue an eviction notice.

The applicant's evidence

The evidence of the applicant was that he was seeking an order for the respondent's eviction. His evidence was that the respondent had at least three months arrears of rent at the point that he issued the notice to leave. He spoke to the figures contained in the rent statement. He was unable to account for the discrepancy in the monthly arrears as compared with the four weekly arrears other than to say that his figures had been checked and there was a difference due to 'phasing' as the local authority pay housing benefit 4 weekly rather than monthly. He gave evidence that the main reason for seeking the eviction was down to the arrears and the fact that they were increasing each month. He was otherwise happy with the respondent as his tenant. The respondent was paying around £5 per week and the shortfall was £19.61 per week. The applicant's evidence was that the arrears had only accrued since August 2018 and before that the respondent has been paying the shortfall of £19.61. He also gave evidence that at the point of the notice to leave being sent there were arrears of £418.54 but this was not borne out by the table of figures he lodged on 29 November 2018.

The respondent's evidence.

The respondent agreed that she has arrears of rent and then she has been in arrears for at least three consecutive months. She did not dispute the monthly figures presented by the applicant and she accepted that the arrears are getting bigger each month. She gave evidence that she stopped paying her part of the rent in August 2018 when she received the notice to leave. She gave evidence that she was advised not to pay her part of the rent and to keep her money to pay for storage of her furniture in the event that she was evicted. The respondent's evidence was that she wishes to stay in the property and to take steps to reduce the arrears. She will seek out any help she can to do this and in addition, she will increase the £5 per week she is currently paying.

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Reasons

This application was adjourned from the CMD to ascertain the level of arrears and when they accrued. The applicant was asked to lodge calculations of the arrears based on monthly as well as 4 weekly rent. The calculations produced by the applicant for 4 weekly rental payment and arrears bore no relation to the calculations for the monthly rent and arrears. The tribunal proceeded with the evidence on the basis of the monthly figures and it was clear that based on these, the respondent has been in arrears of rent since August 2018. The respondent did not dispute any of the figures.

The figures produced tended to support the respondent's evidence that the arrears only accrued after she was served with the notice to leave. It was served on 20 August 2018. What also emerged was that the figures produced by the applicant on 29 November 2018 did not tie in with the arrears noted in the notice to leave. According to the applicant's own figures, the arrears in August 2018 were £52.87 and in the two months prior to that, the respondent was in credit. Further, looking at the 4 weekly figures produced by the applicant (which the tribunal did not consider to be credible or reliable) the respondent was in credit in August 2018 and had been for the 2 months previously. The applicant attempted to provide an explanation for the arrears calculation on the notice to leave. The tribunal's view was that based on the applicant's own figures, the notice to leave does not appear to be valid.

In any event, and putting the fact that the notice to leave appears to be invalid aside, the tribunal was satisfied that the tenant has been in rent arrears for three consecutive months. There are rent arrears noted for August, September, October and November 2018.

The tribunal went on to consider the reasonableness of granting the eviction. The tribunal decided unanimously that it would not be reasonable in all of the circumstances to grant the eviction. The tenant was not in three months consecutive arrears at the point she was given notice to leave. She accepts that she allowed the arrears to accrue after that but she is now taking steps to reduce the arrears. She has fulfilled the other aspects of her tenancy and she and her young daughter wish to continue to reside there until perhaps at some point she is eligible for a local authority tenancy.

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

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party must seek permission to appeal within 30 days of the date the decision was sent to them.

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4 January 2019

Lesley A Ward Legal Member

Date