

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 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/18/2841

Re: Property at 25 Balmore Drive, Hamilton, ML3 8DB (“the Property”)

Parties:

Turing Properties Investment Limited, Milton House, 33a Milton Road, Hampton, Middlesex, TW12 2LL (“the Applicant”)

Ms Darcey Carrigan, 25 Balmore Drive, Hamilton, ML3 8DB (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

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

1. Background

- 1.1. The Applicant sought an order for eviction in respect of the property, on four grounds: that the Respondent failed to take reasonable care of the property, that the Respondent engaged in relevant antisocial behaviour, that the Respondent associated in the let property with someone with a relevant criminal conviction or who engaged in relevant antisocial behaviour, and that the Respondent is in rent arrears. An application in terms of Rule 109 (Private Residential Tenancy Eviction Order) was received by the Tribunal on 23rd October 2018.
- 1.2. The Applicant separately lodged an application in respect of rent arrears.

- 1.3. The Applicant lodged the lease dated 9th February 2018, the notice to leave dated 3rd August 2018, a section 11 notice dated 19th October 2018, a rent statement, an invoice from *Orbis* in respect of repairs to the property dated 7th June 2018 and copies of text messages between the Respondent and the letting agent.
- 1.4. The Tribunal fixed a Case Management Discussion in respect of both cases for 20th December 2018, and this was intimated to parties. The Respondent was served with the letters informing her of the date for the Case Management Discussion, together with the aforementioned documents, by Sheriff Officer. The Respondent was advised that written representations in response to the applications were to be lodged by 13th December 2018. No responses have been received. The Respondent was also informed that she required to attend the Case Management Discussion, and that the Tribunal could at the Case Management Discussion make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

2. The Case Management Discussion

- 2.1. The Applicant was represented by Ms Amanda Black, Solicitor.
- 2.2. By 1400 hours the Respondent had failed to attend at the venue. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend, in the event that she was running late. The Respondent failed to attend the Case Management Discussion and did not contact the tribunal to explain her absence.
- 2.3. The Applicant invited the Tribunal to proceed in the absence of the Respondent, and to grant both orders. The Applicant confirmed that the Respondent had not made contact with the Applicant in advance of the Case Management Discussion.
- 2.4. The Tribunal was satisfied that the Respondent had wilfully failed to attend the Case Management Discussion, and that it was fair to proceed in her absence.
- 2.5. The Respondent sought to amend the Application to correct errors in the numbering of the grounds relied upon. There being a full description of the grounds in the application, the Tribunal considered that there was no prejudice to the Respondent and allowed the amendment.
- 2.6. The Applicant confirmed that there had had been no further rent payments since the application had been lodged and the rent outstanding was £4,250.

2.7. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with oral submissions from the Applicant in respect of those documents.

3. Findings in Fact

3.1. The Applicant and the Respondent entered into a tenancy agreement on 9th February 2018, with the start date of the lease being 9th February 2018.

3.2. The rent payable was £425 per calendar month.

3.3. The Respondent made one rent payment, on 18th April 2018. The Respondent made no further rent payments in respect of the property.

3.4. On 3rd August 2018 a Notice to Leave was served on the Respondent, indicating that the possession of the property was required by 8th September 2018.

3.5. The Respondent did not vacate the property.

3.6. The Application was submitted after the expiry of the notice period.

3.7. The Respondent has been continuously in rent arrears since the start of the tenancy.

3.8. On 20th December 2018 the amount of the rent arrears was £4,250.

4. Reasons for Decision

4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

4.2. Schedule 3, paragraph 12(1) and (2) of the 2016 Act provides that:

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by subparagraph (1) applies if-

(a) At the beginning of the day on which the tribunal first considers the application for 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 month's 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;*

(b) *The Tribunal is satisfied that the tenant's 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.*

- 4.3. The Tribunal accepts that the Respondent is in arrears of more than £425, which represents one month's rent.
- 4.4. The tribunal accepts that the Respondent has been in rent arrears for a continuous period of more than three consecutive months.
- 4.5. There was no evidence that the rent arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 4.6. Accordingly the Tribunal was satisfied that the grounds were met and the Tribunal was required to grant the order.
- 4.7. The Tribunal did not consider the remaining three grounds, it being unnecessary.

5. Decision

- 5.1. The order for eviction is granted.

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.

L MacDonald

Legal Member/Chair

20/12/18

Date