

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/18/3391

Re: Property at 156 Torbrex Road, Cumbernauld, G67 2JT (“the Property”)

Parties

Catherine Hunter, 2a Westmount Park, Newtonards, Co. Down, BT23 4BP (“the Applicant”)

Jacqueline and Gavin Swarbrick, 156 Torbrex Road, Cumbernauld, G67 2JT (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland grants an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 10 December 2018 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 156 Torbrex Road, Cumbernauld, G67 2JT (“the Property”).
2. On 24 December 2018 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 14 January 2019 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 30 January 2019. The Tribunal advised parties on 14 January 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 1 February 2019. This paperwork was served on the Respondents by Ian Wylie, Sheriff Officer, Glasgow on 15 January 2019 and certificates of execution of service were received by the Tribunal administration.
4. The Respondents did not make any written representations by 30 January 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 1 February 2019. The Applicant was represented by Mr Ritchie from Hardy Macphail, Solicitors. The Respondents did not appear and were not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondents signed and dated 1 April 2018, Notices to Leave addressed to each Respondent with Sheriff Officer’s Executions of Service dated 31 October 2018, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council with Sheriff Officer’s Execution dated 1 December 2018.
7. Mr Richie moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”).
8. The Tribunal noted that the Applicant and the Respondents entered into a Private Residential Tenancy dated 1 April 2018 in relation to the Property. In terms of Clause 8 of the Private Residential Tenancy Agreement, the

Respondents agreed to pay monthly rent of £495 to the Applicant. Mr Ritchie for the Applicant referred to the rent statement to 1 November 2018 included with the Application and referred to an up to date statement in terms of which the arrears had increased to £3384.00 with the last payment on 2 October 2019.

9. Mr Ritchie explained that the Respondents had paid very little throughout the course of the tenancy and was not aware of any housing benefit issues. Mr Ritchie referred the Tribunal to Notices to Leave issued under Section 50(1) and Ground 12 of Schedule 3 of the Private Housing Tenancies) (Scotland) Act 2016 dated 31 October 2018 addressed to each of the Respondents. Both notices were served on the Respondent by Sheriff Officers on 31 October 2018. The Respondents had not vacated the Property and to the best of his knowledge they still resided in the Property. He moved for an order for eviction under Ground 12 of Schedule 3 of the Act on the basis the Respondents had been continuously in arrears of rent for three consecutive months and the arrears were in excess of a month's rent.
10. The Tribunal noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served by way of Sheriff Officers on 1 December 2018.

Findings In Fact

1. The Applicant and the Respondents agreed by way of a Private Residential Tenancy Agreement dated 1 April 2018 in relation to the Property at 156 Torbrex Road, Cumbernauld, G67 2JT that the Respondents would pay the Applicant a calendar monthly rent of £495.
2. The Respondents had fallen into arrears of rent.
3. The Respondents last paid rent to the Applicant on 2 October 2018 when a payment to account in the sum of £400.00 was made. By then the Respondents were already in arrears of £1899. 00. The Respondents have made no payments of rent since that date. There were no housing benefit issues.
4. On 31 October 2018 by way of Sheriff Officers the Applicant served Notices to Leave.
5. Arrears of rent were £2394 as of 1 November 2018.

6. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on North Lanarkshire Council by way of Sheriff Officers on 1 December 2018.
7. Arrears have increased to £3384 as of 1 February 2019.

Reasons For Decision

8. Mr Ritchie provided evidence of non-payment of rent in the form of the rent statement. The Tribunal was satisfied on the basis of the rent statement and the supporting oral submissions made on behalf of the Applicant that the Respondents are in arrears of rent. The Tribunal was satisfied that Ground 12 of Schedule 3 of the 2016 Act had been established as the Respondents had failed to pay three consecutive months' rent payment and was still in excess of one month rent payment in arrears. The Tribunal was satisfied the arrears were not wholly or partially a consequence of the delay or failure of a relevant benefit. The Tribunal was satisfied all appropriate paperwork had been served.

Decision

9. The Tribunal granted an order of recovery of repossession.

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.

S Evans

Shirley Evans
Legal Member/Chair

1 February 2019
Date