



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

Chamber Ref: FTS/HPC/EV/22/0939

Re: Property at 148A High Street, Irvine, KA12 8AH (“the Property”)

Parties:

McMail Properties, 17 - 19 Hill Street, Kilmarnock, KA3 1HA (“the applicants”)

Ms Emma Hay, 148A High Street, Irvine, KA12 8AH (“the respondent”)

Tribunal Members:

David Preston (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted in favour of the applicants.

Background:

1. An application under Rule 109 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) was made on 1 April 2022. The application was based on ground 12 of Schedule 3 of the Private Housing (Tenancies) Act 2016.
2. In support of the application the applicants submitted: Private Residential Tenancy Agreement dated 20 March 2021; Notice to Leave dated 29 September 2021 with proof of delivery dated 30 September 2021; landlord’s evidence including tenants’ rights information and correspondence to tenant; rent statement; and Notice to the local Authority under section 11 of the Homelessness etc (Scotland) Act 2004.
3. By Decision dated 19 May 2022 a Legal Member of HPC having delegated power for the purpose, referred the application under Rule 9 of the Regulations to the tribunal. A letter of Intimation with Notice of the Case Management Discussion to be held on 3 August 2022 by telephone together with the application and case

papers were served on the tenant by Sheriff Officers on 24 June 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Intimation thereof.

4. On 19 July 2022 the applicants submitted an email from the applicants confirming that no further rent had been paid and requesting that the additional arrears should be added to the outstanding rent in a total amount of £5320.
5. On 3 August 2022 the CMD was convened by telephone. Mr McMail, a partner of the firm of McMail Properties attended along with his personal assistant, Ms Ruth Rayner. There was no appearance by or on behalf of the respondent. The tribunal was provided with a copy Certificate of Intimation of the application and supporting papers served on the respondent on 24 June 2022
6. The tribunal was satisfied: that all relevant documents and intimation of today's hearing had been duly served on the respondent; that the requirements of Rule 24 had been complied with; and that the respondent had voluntarily waived her right to be present or represented at the CMD. The start of the CMD was delayed until 10:10 with no appearance by her or on her behalf and she did not attempt to join the conference call during the progress of the discussion. It was accordingly content to proceed in the absence of the respondent.

Case Management Discussion

7. Mr McMail confirmed that no rent had been received from the respondent since April 2021 and that the arrears now amounted to £5320. He advised that, notwithstanding terms of the tenancy agreement that the rent be partly paid direct by the local authority through housing benefit, the respondent had arranged for the housing benefit to be paid to her direct which was to be passed on to the applicants, which she did in part until the payments stopped in August 2021. Despite inquiries of the local authority and subsequently the benefits agency, the applicants had been unable to obtain payment or information regarding the benefit. In August 2021 the respondent indicated that she intended to voluntarily leave the property on 27 August 2021. She refused access to the applicants to inspect the property and failed to vacate as indicated. She asked the applicants to provide her with a letter of eviction which they had been unable to do without obtaining an eviction order.
8. Mr McMail advised that, so far as he was aware the respondent remained in occupation of the property. They had been unable to obtain access for inspection purposes in August and since then they have enquired of neighbours who have indicated that property remains occupied, whether by the tenant or others. The following communications from the respondent had been text messages asking about the progress of the eviction application with no mention of the rent or the arrears.
9. The tribunal noted that the tenant had been able to recover her deposit from Safe Deposits Scotland on 21 September 2021 Mr McMail advised that this had happened due to an administrative error on the part of the applicants who had failed to respond to Safe Deposits Scotland before they had released the funds.

10. The tribunal was satisfied that the applicant had provided the respondent with all information and advice as required and that the respondent had received all relevant paperwork and had voluntarily waived her right to appear at the tribunal.
11. The applicants were unable to provide any details of the personal circumstances of the respondent.

Reasons for Decision

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, to determine the application at the CMD.
13. The tribunal was satisfied with the written and oral evidence of the applicants that as at the date of the application (1 April 2022), arrears of rent in excess of three months had accrued. No payments had been made since that date, leaving arrears in excess of a sum equivalent to one month's rent in arrears for a continuous period up to the date of the CMD of three or more consecutive months and that the arrears had not resulted wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit.
14. The tribunal was satisfied that the granting of an eviction order was reasonable in the circumstances in view of the lack of communication from the respondent regarding the payment of rent or the arrears, notwithstanding the efforts made by the applicants. She had made no meaningful contact with the applicants and had continued in occupation of the property without taking any steps to make any payments towards the rent or arrears.

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.

David Preston

3 August 2022