



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/22/1107

Re: Property at 4b Allan Lea Terrace, Dunfermline, KY12 9FG (“the Property”)

Parties:

Mr Jeromey Jackson, 69 Blacklaw Road, Dunfermline, KY11 4AS (“the Applicant”)

Mr Barry Boylan, 4b Allan Lea Terrace, Dunfermline, KY12 9FG (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 14 April 2022 the Applicant’s representatives, Bannatyne, Kirkwood, France & Co, Solicitors, Glasgow applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave and proof of service, letter of authority, pre-action letters, rent statement, title deeds and landlord registration document and section 11 notice in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant’s representatives, by Notice of Acceptance dated 26 May 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 29 June 2022.
4. The Applicant's representatives submitted a further rent statement to the Tribunal by email dated 25 July 2022. and confirmation that this had been intimated to the Respondent by email.

The Case Management Discussion

5. A CMD was held by teleconference on 8 August 2022. The Applicant did not attend but was represented by Ms Alexandra Wooley from the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD having been given to the Respondent determined to proceed in his absence.
6. Ms Wooley referred the Tribunal to the documents submitted on the Applicant's behalf and went on to say that the Respondent had been in arrears of rent for a significant period. She submitted that although the Respondent had reduced the arrears there was still a significant amount due. She explained that in March 2022 the Respondent had agreed a repayment plan with the Applicant's letting agent whereby he would commence paying the full rent each month together with an additional £200.00 towards the arrears but had failed to maintain this agreement. Ms Wooley went on to say that the amount due had risen to £1777.56 at 1 July 2022 and that the Respondent had failed to make any payment on 1 August 2022.
7. Ms Wooley explained that the Applicant was dependent upon the rental income from the Respondent to meet the Applicant's mortgage on the property and the failure of the Respondent to pay his rent had a serious impact upon the Applicant's finances. Ms Wooley said that she was aware the Respondent lived alone in the property but had no further knowledge of his personal circumstances. She submitted that it was reasonable in the circumstances to grant the order for eviction.

Findings in Fact

8. The Applicant is the owner of the property.
9. The Applicant authorised Mr Akhtar Ali of Zenlet Property Management to let the property to the Respondent.
10. The Respondent entered into a Private Residential Tenancy Agreement to rent the property at a rent of £420.00 per calendar month with effect from 25 May 2018.
11. The Respondent fell into arrears of rent in May 2021.

12. A notice to leave was served on the Respondent by email on 5 August 2021.
13. Pre-action letters were sent to the Respondent on 11 October and 5 November 2021
14. A Section 11 Notice was sent to Fife Council on 14 April 2022.
15. The rent due by the Respondent on 1 July 2022 amounted to £1777.56.
16. The Respondent failed to make any payment of rent on 1 August 2022.
17. The Applicant has a mortgage over the property and is dependent on the rental income to meet his outgoings in respect of the property and for income from the property.
18. The Respondent lives alone in the property.

Reasons for Decision

19. The Tribunal was satisfied from the Documents submitted together with the written and oral submissions that the Respondent had entered into a Private Residential tenancy in respect of the property at a rent of £420.00 per calendar month.
20. The Tribunal was also satisfied that the Respondent had been properly served with a valid Notice to Leave and appropriate pre-action letters and that proper intimation of the application had been given to Fife council by way of a Section 11 Notice.
21. As at the date of the CMD the Respondent had been in rent arrears rent for three or more consecutive months and the arrears amounted to more than the equivalent of one month's rent. In fact, assuming that the Respondent had still not paid the rent due on 1 August the total amount due would have risen to almost £2200.00, more than five months' rent. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 the Tribunal would have been obliged to grant the order for eviction. However, the Tribunal is obliged to take into account the circumstances of the parties and consider whether in these circumstances it is reasonable to grant an order for eviction.
22. In reaching its decision the Tribunal took account of the fact that the Respondent had since January 2022 managed to reduce the amount of rent arrears but it did appear that once again the arrears were starting to increase. The Tribunal also took into account the fact that despite being given an opportunity to submit written representations and to attend or be represented at the CMD the Respondent had chosen to do neither. The Tribunal also took into account that it appeared from the information provided that the Respondent was a single person with no dependents living at the property. The Tribunal took account of the submissions made on behalf of the Applicant that he had a mortgage over the property and was dependent on the rental income to meet

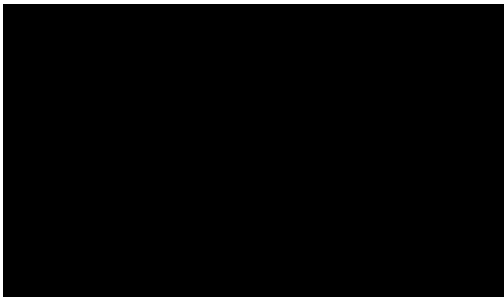
his obligations in respect of the property and was suffering financial hardship as a result of the respondent's failure to pay his rent and adhere to an agreed repayment plan. Taking everything into account the Tribunal was satisfied that it was reasonable in the circumstances to grant an order for eviction.

Decision

23. The Tribunal having carefully considered the written representations and documents submitted together with the oral submissions and being satisfied it had sufficient information before it to make a decision determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.



**Graham Harding
Legal Member/Chair**

**8 August 2022
Date**