

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/22/1497

Re: Property at Flat 4, 20 Crookston Court, Larbert, Falkirk, FK5 4XF (“the Property”)

Parties:

Mrs Mandy Haldane, 15 Jardine Avenue, Larbert, Falkirk, FK2 8RG (“the Applicant”)

Miss Rachel Scott, David Walsh, Flat 4, 20 Crookston Court, Larbert, Falkirk, FK5 4XF; Flat 4, 20 Crookston Court, Larbert, Falkirk, FK5 4XF (“the Respondents”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 18th May 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 12 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
 - a. Private Residential Tenancy Agreement with commencement of tenancy being 5th November 2021;
 - b. Notice to Leave signed 5th April 2022 stating an application would not be submitted to the Tribunal before 5th April 2022;

- c. Section 11 notice noting proceedings would not be raised before 13th May 2022;
 - d. Rent statement from 26th October 2021 to 5th April 2022. This detailed the rent of £695 per month and arrears of £2700;
 - e. Copy letter dated 5th April serving Notice to Leave upon the Respondents which included the Pre Action Requirement; and
 - f. Sheriff officer execution of service of the Notice to Leave upon the Respondents both dated 7th April 2022
3. The Tribunal also had before it a copy of the title deeds numbered STG1719.
 4. On 23rd July 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 1st September 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 13th August 2022.
 5. On 26th July 2022, sheriff officers served the letter with notice of the hearing date and documentation upon both of the Respondents by letterbox service. This was evidenced by Certificate of Intimation dated 26th July 2022.

The Case Management Discussion

6. A CMD was held on 1st September 2022 at 10am by teleconferencing. The Applicant did not attend but was represented by Mr Philip Bonner, solicitor, Russell & Aitkin solicitors. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the CMD.
7. Mr Bonner told the Tribunal that as far as he was aware that there were not any Housing Benefit/Universal Credit issues outstanding. He understands that the Respondents are both working and have been throughout the duration of the tenancy. He noted that while there have been offers to pay missed payments in the letting agent’s office these have not transpired. The Respondents are now not paying any rent. They have not paid any rent since the last rent statement and the arrears have continued to accrue. There have been no offers of payment to the arrears.
8. Mr Bonner noted that the First Named Respondent, Ms Rachel Walsh, had emailed the Applicant on the 7th or 8th of June 2022 to state that the standard of service from the letting agent had been poor. She insinuated that she was withholding rent due to repairs having not been done. However, there was no formal notification of withholding rent and Mr Bonner is not aware of a Repairing Standards application being lodged with the Housing and Property Chamber. He obtained a copy of all the communications between the letting agent and tenants. This ran to 120 pages and included all telephone calls and correspondence. He noted that on at least three occasions the letting agent had tried to gain entry to undertake repairs but that it was not possible to get into the Property. This last occurred on or around 11th August 2022 when the letting agent saw a candle burning and noted that the key was in the lock. The

presumption was that someone was in the Property. Given all of this information, Mr Bonner did not consider that the email in June 2022 was relevant. The Tribunal noted that the Respondents had not submitted any submissions and not raised this point as a reason for the non payment of the arrears. They would have had to follow the proper procedures regarding with holding their rent. Mr Bonner had not been made aware that the Respondents had the outstanding arrears held in a separate bank account. The Tribunal did not consider that this prevented an order being granted.

9. Mr Bonner did not know of any issues of reasonableness as to why the Respondents should not be evicted from the Property.
10. The Tribunal considered that the Respondents were in rent arrears for three consecutive months at the Notice to Leave and have not made payments to the arrears. There are no issues of reasonableness preventing the Tribunal from granting an order for eviction.

Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 5th November 2021.
12. The Respondents persistently failed to pay their rent charge of £695 per month. The rent payments are due to be paid on the 5th day of each month.
13. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the CMD.
14. The Respondents have not made any payment agreements to address the arrears. They are currently not paying the rent charge.
15. There are no outstanding Housing Benefit or Universal Credit issues.
16. The arrears sought in the application total £2700 and have continued to accrue since that point. The Tribunal was satisfied that the Respondent had been aware that a higher amount was being sought in the application.

Decision

17. The Tribunal found that ground 12 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

1st September 2022

Legal Member/Chair

Date